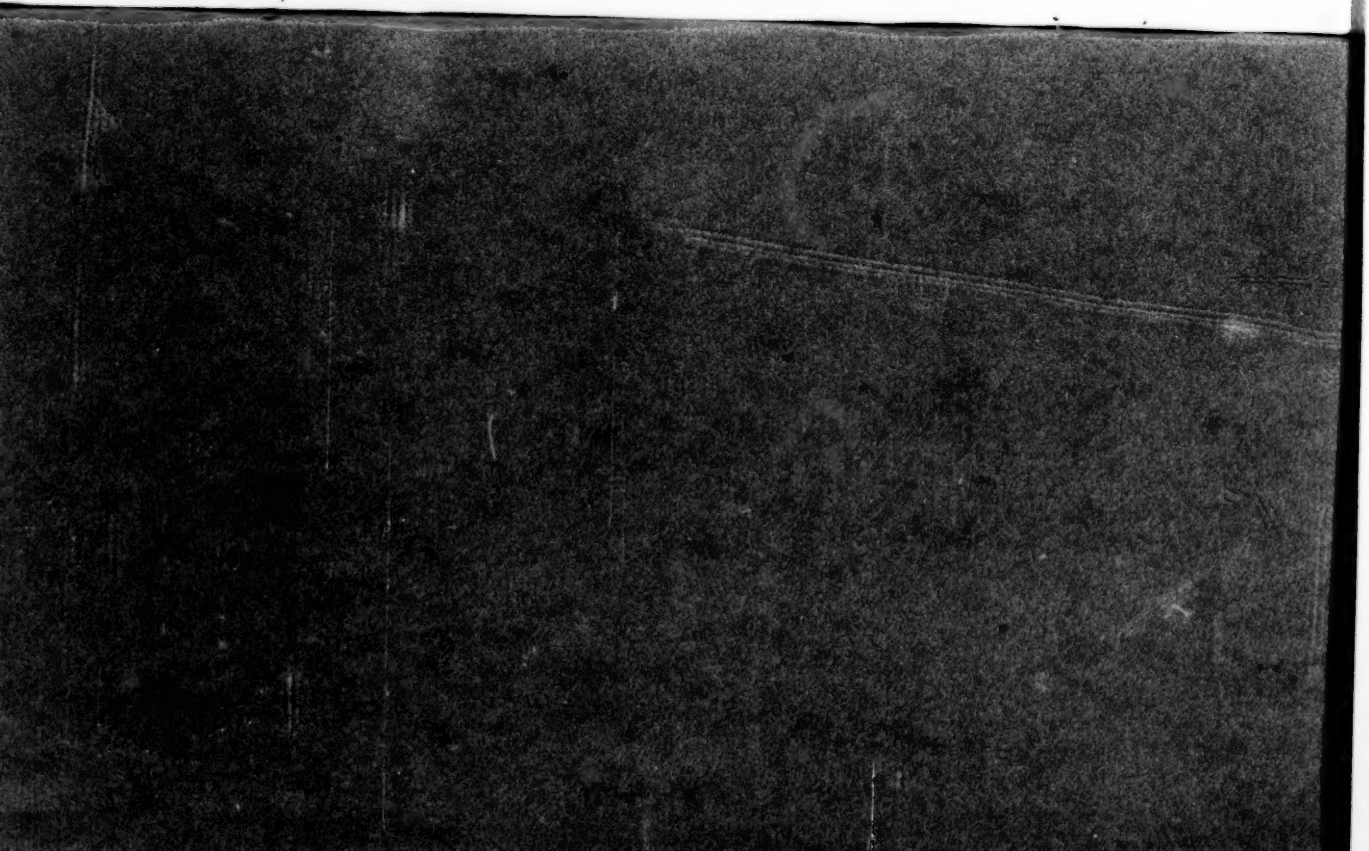

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 382.

THE UNITED STATES, APPELLANT,

vs.

MRS. GUE LIM, AH TONG, YEE YUEN, AND AH QUONG

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

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a In the district court of the United States for the district of Washington.

UNITED STATES *vs.* MRS. GUE LIM, AH TONG, YEE YUEN, and AH QUONG.	No. 1136 in the northern division. Nos. 178, 179, and 181, respectively, in the western division.

TRANSCRIPT ON APPEAL.

Appeal from the district court of the United States for the district of Washington to the Supreme Court of the United States.

1 In the United States district court for the district of Washington, northern division.—Before the Honorable C. H. Hanford, judge of said court.

UNITED STATES OF AMERICA *vs.* MRS. GUE LIM.	No. 1136.

Complaint.

F. D. Schuyler, of lawful age, being first duly sworn, on his oath says that he is a Chinese inspector of the United States, and that Mrs. Gue Lim is a Chinese laborer, and was found unlawfully in the United States, at the county of King, in the district of Washington, on the 2nd day of October, 1897, without having been registered as a Chinese laborer and without having in his *her* possession then and there a certificate of registration as a Chinese laborer, as required by law, and without having any other legal right or authority to be and remain in the United States, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

F. D. SCHUYLER.

Subscribed and sworn to before me this 2nd day of October, 1897.

R. M. HOPKINS,
Clerk of the United States District Court for the District of Washington.

(Indorsed:) Complaint. Filed Oct. 2, 1897, in the U. S. district court. R. M. Hopkins, clerk, by H. M. Walthew, deputy.

2 OCTOBER 7, 1897.

District Court Gen'l Order Book, volume 3, page 414.

UNITED STATES *v.* MRS. GUE LIM.	1136.

Now, on this day, this cause coming on for final hearing, the court, after hearing argument of respective counsel, takes said matter under advisement.

3 In the district court of the United States, district of Washington.

UNITED STATES }
vs.
MRS. GUE LIM. }

Warrant.

Whereas on the 2nd day of October, A. D. 1897, F. D. Schuyler, esq., a Chinese inspector of the United States, has filed a complaint against the said Mrs. Gue Lim, charging that the said Mrs. Gue Lim was on the 2nd day of October, 1897, at the county of King, in the district of Washington, a Chinese person, that is to say, a Chinese laborer, and that the said Mrs. Gue Lim was then and there unlawfully in the United States, without having a certificate of registration as a Chinese laborer, or any other legal authority to remain in the United States, contrary to the form of the statutes of the United States of America in such case made and provided, and against the peace and dignity of the United States of America:

Now, therefore, you are hereby commanded in the name of the President of the United States of America to apprehend the said Mrs. Gue Lim, and her bring before said district court in the city of Seattle to answer said complaint.

Witness the Hon. C. H. Hanford, judge of said district court and the seal thereof, at the city of Seattle, this 2nd day of October, 1897.

R. M. HOPKINS, *Clerk*,
[SEAL.] By H. M. WALTHEW, *Deputy Clerk*.

To the United States marshal for the district of Washington, or to any or either of his deputies.

4 I hereby certifty that I received the within warrant on the 2nd day of October, A. D. 1897, and on the same day executed the same by arresting the within named Mrs. Gue Lim at Seattle, and have her body now in court, as herein I am commanded.

C. W. IDE, *U. S. Marshal*,
By J. H. MCLAUGHLIN, *Deputy*.

Dated Oct. 7th, 1897.
Marshal's fees, $2.52.

(Indorsed:) Warrant of arrest. Filed Oct. 9, 1897. R. M. Hopkins, clerk, by A. N. Moore, deputy.

5 OCTOBER 21, 1897.

District Court General Order Book, volume 3, page 419.

UNITED STATES }
v. } 1136.
MRS. GUE LIM. }

Now, on this day, this cause coming on to be heard, the court, after hearing evidence on behalf of plaintiff and defendant, holds that the said Mrs. Gue Lim is the wife of a Chinese merchant, lawfully domiciled

and doing business as a merchant, not a laborer nor a person excluded by the laws of the United States from coming to or remaining in the United States; and she is, therefore, discharged from custody and this cause dismissed.

6 In the district court of the United States, district of Washington, northern division.

THE UNITED STATES }
vs.
MRS. GUE LIM. }

Opinion.—Filed October 28, 1897.

Wm. H. Brinker, United States attorney, for the United States; George S. Bush, for the defendant.

HANFORD, district judge:

The defendant is the wife of a Chinese merchant, lawfully domiciled and doing business as a merchant in this State; upon her arrival, a few months ago, the collector of customs at the port of her arrival, upon proof which he considered sufficient, that she is not a laborer, nor a person excluded by the laws of the United States from coming to this country, and that she is the lawful wife of a Chinese merchant, permitted her to land and take up her residence with her husband; but her right to enter was not evidenced by the certificate prescribed by the 6th sec. of the act of July 5th, 1884 (1 Sup. R. S., 2nd ed., 459), which reads as follows:

"SEC. 6. That in order to the faithful execution of the provisions of this act, every Chinese person, other than a laborer, who may be entitled by said treaty or this act to come within the United States, and who shall be about to come to the United States, shall obtain the permission of and be identified as so entitled by the Chinese Government, or of such other foreign Government of which at the time such Chinese person shall be a subject, in each case to be evidenced by a certificate issued by such Government, which certificate shall be in the English language, and shall show such permission, with the name of the permitted person in his or her proper signature, and which certificate shall state the individual, family, and tribal name in full, title or official rank, if any, the age, height, and all physical peculiarities, former and present
7 occupation or profession, when and where and how long pursued, and place of residence of the person to whom the certificate is issued, and that such person is entitled by this act to come within the United States.

"If the person so applying for a certificate shall be a merchant said certificate shall, in addition to above requirements, state the nature, character, and estimated value of the business carried on by him prior to and at the time of his application as aforesaid. * * *"

The present proceeding was initiated by a complaint sworn to by an officer whose duty is to see to the enforcement of the statutes excluding Chinese laborers, alleging that the defendant is a Chinese laborer, not registered, and not having possession of a certificate of registration, as

required by the act of May 2, 1892 (2 Sup. R. S., p. 13). Upon said complaint a warrant was issued, and the defendant has been brought before the court for the purpose of obtaining an order for her deportation.

As the defendant does not belong to the laboring class, she is not required to be registered, and her arrival in this country was not in time to have entitled her to be registered, as provided in the last-mentioned act. The question in the case is whether she was entitled to be admitted upon her arrival without producing the certificate required of Chinese persons privileged to enter by the 6th sec. of the act of 1884, above quoted.

In a case similar to this, which came before Judge Deady at Portland in 1890, that eminent judge considered the question in all its phases, and held that the wife and minor child of a Chinese merchant lawfully dwelling in the United States were not of the laboring class, and therefore not excluded from entering; and held section 6 of the act of 1884 to be not applicable to such a case for the reason that it is impracticable for such persons to comply with the requirements of that section, and the effect of the statute, if applicable to such cases, must necessarily be to
8 exclude them and deprive them of rights guaranteed by the treaty of 1880. (In re Chung Toy Ho, 42 Fed. Rep., 398.)

I find support for this decision in the opinion of Judge Sawyer, in the case of Ah Moy, 21 Fed. Rep., 785, wherein he shows that the Chinese exclusion acts were intended to apply to laborers as a class, and that the wife of a Chinese person has the same status as her husband, and belongs to the class to which he belongs, whether she is in fact a laborer or not. Also in the decision of the Supreme Court in the case of Lau Ow Bew, 144 U. S., 47–64, wherein it was held that a Chinese merchant having an established mercantile business in the United States, and maintaining therein a commercial domicil, upon returning from a temporary absence, was entitled to enter and remain in this country without producing the certificate required by sec. 6 of the act of 1884. Chief Justice Fuller, in the opinion of the court, says:

"The amendatory act of July 5, 1884, enlarged the terms of the certificate and provided that it should be the sole evidence permissible on the part of the person producing the same to establish a right of entry into the United States. This rule of evidence was evidently prescribed by the amendment as a means of effectually preventing the violation or evasion of the prohibition against the coming of Chinese laborers. It was designed as a safeguard to prevent the unlawful entry of such laborers under the pretence that they belonged to the merchant class or to some other of the admitted classes. But the phraseology of the section, in requiring that the certificate of identification should state not only the holder's family and tribal name in full, his title or official rank, if any, his age, height, and all physical peculiarities, but also his former and present occupation or profession, when and where and how long pursued, and his place of residence, and, if a merchant, the nature, character and estimated value of the business carried on by him prior to and at the time of his application for such certificate, involves the exaction of the unreasonable and absurd condition of a foreign government certifying to the United States facts in regard to the place of abode and the business of

persons residing in this country which the foreign government can not be assumed to know, and the means of information in regard to which exist here, unless it be construed to mean that Congress intended that the certificates should be produced only by Chinese residing in China or some other foreign country, and about to come for the first time into the United tates for travel or business, or to take up their residence. * * *

"By general international law, foreigners who have become domiciled in a country other than their own acquire rights and must discharge
9 duties in many respects the same as possessed by and imposed upon the citizens of that country, and no restriction on the footing upon which such persons stand by reason of their domicil of choice, or commercial domicil, is to be presumed; while by our treaty with China, Chinese merchants domiciled in the United States have, and are entitled to exercise, the right of free egress and ingress, and all other rights, privileges, and immunities enjoyed in this country by the citizens or subjects of the 'most favored nations.'

"There can be no doubt, as was said by Mr. Justice Harlan, speaking for the court in Chew Heong v. United States, 112 U. S., 536-549, that 'since the purpose avowed in the act was to faithfully execute the treaty, any interpretation of its provisions would be rejected which imputed to Congress an intention to disregard the plighted faith of the Government, and consequently the court ought, if possible, to adopt that construction which recognized and saved rights secured by the treaty.'

"Tested by this rule it is impossible to hold that this section was intended to prohibit or prevent Chinese merchants having a commercial domicil here from leaving the country for temporary purposes and then returning to and reentering it, and yet such would be its effect, if construed as contended for on behalf of appellee."

In reason, it seems to me that this statute could not have been intended by Congress to apply to cases like the one now being considered. Its nonapplicability is shown by the fact that compliance with its requirements on the part of persons in the situation of this defendant is impossible, and it is unreasonable to presume that Congress intended to exact of persons whose right to dwell in this country has been secured by treaty stipulations performance of impossible conditions, or to deprive them of the right to come into this country for nonperformance of such conditions. If it was intended to abrogate the treaty Congress would have so declared in explicit terms.

I would not have felt called upon to write an opinion in this case if it were not for the fact that recently Judge Lacombe, in the Li Foon Case, 80 Fed. Rep., 881, has given effect to this statute as a barrier to the admission into the United States of an infant child of a Chinese merchant lawfully residing therein, and upon the authority of his decision the officers of the Government insist that the defendant in this case must be separated from her husband and returned to China.

10 In his opinion the learned judge seems to have been led to his conclusion by considerations of what he supposed to be the weight of authority, and yet he ignores entirely the decision by Judge Deady in the Chung Toy Ho Case, and the decision of the Supreme Court in the Lau Ow Bew Case. He says the only authority cited in support of the right of a child of a Chinese merchant, residing here, to

come into the United States is the Chung Shee Case, 71 Fed. Rep., 277, but "apparently in that case the betrothed bride held a certificate." As a matter of fact, the Chung Shee Case, as reported in 71 Fed. Rep., is not an authority on that point at all. The decision in that case by Judge Wellborn was to the effect that the right of the woman to come into the United States and remain had been finally adjudicated by Judge Bellinger, and that the judgment in her favor rendered at Portland, Oregon, was final and conclusive, and he therefore declined to consider the question as to the right of a wife or child of a Chinese merchant, in this country, to come into the United States without producing the certificate required by the act of 1884. Further, in his opinion, Judge Lacombe says:

"The clear weight of authority is against petitioner's contention (In re Ah Quan, 21 Fed., 182; In re Chinese Wife, id., 786; In re Wo Tai Li, 48 Fed., 668), and there is nothing in the language of the statute warranting any such construction, as was held by the Supreme Court in Wan Shing v. U. S., 140 U. S., 424; 11 Sup. Ct., 729."

In the Ah Quan Case, 21 Fed. Rep., 182, Judge Sawyer and Judge Hoffman gave an interpretation of the statutes harmonious with the conclusions of the Supreme Court in the Lau Ow Bew Case—that is to say, they held the requirements as to certificates required of Chinese laborers returning to the United States to be not applicable to Chinese laborers who departed from the United States prior to June 6, 1882,
11 before the collector of the port was prepared to give the certificates required by sec. 4 of the original act; nor to Chinese laborers who departed from the United States prior to July 5, 1884, or before the collector was prepared to issue certificates under the latter act, having certificates regularly issued under the act of 1882; nor to Chinese other than laborers entitled under the treaty with China, and not prohibited from entering the United States by the restriction acts, who left China or other foreign country before July 5, 1884, on their way to enter the United States. The reason given for excusing such persons from compliance with the letter of the statute, as I gather from the opinion, is that conditions impossible of performance are not to be presumed to have been intended by Congress. The report of the decision contains no statement of facts in the case which Judges Sawyer and Hoffman were called upon to consider, but it is apparent from the opinion that they did not consider the case of a wife or minor child of a Chinese merchant having an established business and domiciled in the United States previous to the coming of such wife or minor child.

In the Chinese Wife case, 21 Fed. Rep., 785, the woman in the case was the wife of a Chinese laborer, and belonged to the class of persons which the statutes prohibit from entering the United States, and Judge Sawyer placed his decision against the right which she claimed on that ground. The opinion by Mr. Justice Field, however, in that case does hold that a Chinese wife must be regarded as a distinct person and that to be entitled to admission she must furnish a certificate as required either by sec. 4 or by sec. 6 of the act of 1884, and his opinion is an authority supporting Judge Lacombe's decision, entitled to due respect. The only comment upon it which I deem proper to make is that it was rendered prior
12 to the decision of the Supreme Court in the case of Chew Heong, 112 U. S., 536–580, in which the court held that the 4th sec. of the

act of May 6, 1882, as amended by the act of July 5, 1884, prescribing the certificate which shall be produced by a Chinese laborer as the only evidence permissible to establish his right to reenter into the United States, is not applicable to Chinese laborers, who, residing in this country at the date of the treaty on Nov. 17, 1880, departed by sea before May 6, 1882, and remained out of the United States until after July 5, 1884, reversing the judgment of the circuit court of the United States for the district of California, given in accordance with the opinion of Mr. Justice Field and contrary to the opinion of Judge Sawyer.

In the Wo Tai Li case, Judge Hoffman held that the wife of a Chinese actor was not entitled to admission without producing the required certificate, but there is nothing in the report of the case to show that her husband was domiciled in this country, or that Judge Hoffman considered the question as to the right of Chinese persons not laborers, having a domicil in the United States, to bring their wives and minor children to dwell with them.

The Wan Shing case, 140 U. S., 424, is not an authority in point. The case is distinguished by the fact that Wan Shing did not, at the time of his proposed return to the United States, have an established business or domicil in the United States. Emphasis is given to these important facts in the opinion of Chief Justice Fuller in the Lau Ow Bew case.

Referring to the decision by Judge Lacombe in the Li Foon case, he states that apparently the betrothed bride, referred to in the Chung Shee case, held a certificate, as if that fact might be considered the basis for the decision in favor of her right to enter. It appears, however, by the
13 report of Judge Bellinger's decision that the only certificate which was considered in the case was a certificate identifying the husband and setting forth that the petitioner was his wife and that such certificate was intended to evidence her right to land by virtue of such relation, which certificate was prepared at Portland, Oregon, and forwarded to China. Certainly this was not the certificate contemplated or required by sec. 6 of the act of 1884. (In re Lum Lin Ying, 59 Fed. Rep., 682.)

I consider that it may be fairly claimed that the weight of authority is not as supposed by Judge Lacombe, but the contrary.

Looking now to the reasons for and against the rule contended for by the officers of the Government, I agree with Judge Deady that the admission of Chinese merchants with their families is not to be regarded as a mischief which the Chinese restriction and exclusion acts were intended to remedy. This is a commercial nation. The maintenance and extension of American commerce with the oriental countries must redound to the benefit of the American people as a whole. Chinese merchants in this country are doing an important part in fostering this important interest, and no benefit whatever can accrue to the people of this country by depriving them of liberty to dwell within our borders with their families under the protection of our laws. The argument that Chinese laborers will come to the United States in great numbers, under pretence of being members of families of merchants already living here, does not have very great force. The law has been administered as interpreted by Judge Deady since the date of his decision in the Chung Toy Ho Case in 1890, and the evils supposed to follow such a decision have not come to pass. But against all argument opposed to liberality towards Chinese of the merchant class, it must be said that it

is the duty of the court to declare the law as Congress has made
14 it, and harmonious with the established rules for the construction and interpretation of statutes. By this test I am constrained to hold that the defendant is entitled to be discharged.

C. H. HANFORD, *Judge.*

(Indorsed:) Opinion. Filed October 28, 1897. R. M. Hopkins, clerk, by H. M. Walthew, deputy.

15 In the United States district court for the district of Washington, northern division.

THE UNITED STATES
vs.
MRS. GUE LIM. } No. 1136.

Agreed statement of facts.

It is hereby agreed and stipulated that the following are the facts upon which said cause was heard and determined:

First. That Gue Lim is a Chinese woman and the lawful wife of Fook Kee, a Chinese merchant who was engaged in buying and selling merchandise at No. 320 Washington street, in the city of Seattle, Washington, under the firm name of Fook Kee & Company; that said Fook Kee was not engaged in the performance of any manual labor, except such as was necessary in the conduct of his business as such merchant, for over one year next preceding the date of his last departure from the United States, which was in April, 1896, and was in all respects a Chinese merchant lawfully domiciled in the United States.

Second. That said Gue Lim arrived at the port of Tacoma, Washington, from China, accompanied by her said husband, this being her first arrival in the United States, and that the collector of customs, acting under general instructions from the Secretary of the Treasury, allowed her to land on May . 1897, without the production of the certificate provided for by section 6 of the act of July 5, 1884.

C. E. CLAYPOOL,
Assistant U. S. Attorney.

GEO. S. BUSH,
Attorney for Defendant.

(Indorsed:) Stipulated facts. Filed June 9, 1898, in the U. S. district court. R. M. Hopkins, clerk, by A. N. Moore, deputy.

16 In the United States district court for the district of Washington, northern division.

UNITED STATES
vs.
MRS. GUE LIM, AH TONG, YEE YUEN, and AH QUONG. } No. 1136 in the northern division; Nos. 178, 179, and 181, respectively, in the western division.

Appeal.

The United States, by Wilson R. Gay, United States attorney, and Charles E. Claypool, assistant United States attorney, feeling itself

aggrieved by the order and judgment entered on the 28th day of October, 1897, in the above-entitled cause, does hereby appeal from the said order to the Supreme Court of the United States, and prays that its appeal may be allowed; and the respective causes of the United States against Ah Tong, Yee Yuen, and Ah Quong, being Nos. 178, 179, and 181 of the court docket of the western division of the above court, having been, by stipulation with respective counsel, heard at the same time, and to abide the order in the case of the United States against Mrs. Gue Lim, being No. 1136 of the court docket of the northern division of the above court, that transcripts of the records of proceedings and papers upon which said order is made, duly authenticated, may be sent to the Supreme Court of the United States.

WILSON R. GAY,
U. S. Attorney.

C. E. CLAYPOOL,
Assistant U. S. Attorney.

(Indorsed:) Appeal. Filed Jun. 13, 1898, in the U. S. district court. R. M. Hopkins, clerk, by H. M. Walthew, deputy.

17 In the United States district court for the district of Washington, northern division.

UNITED STATES *vs.* MRS. GUE LIM, AH TONG, YEE YUEN, and Ah Quong.	No. 1136 in the northern division; Nos. 178, 179, and 181, respectively, in the western division.

Entry.

And now, to wit, on the 13th day of June, 1898, it is ordered that the appeal be allowed as prayed for, and it is further ordered that the clerk of said court prepare a transcript of the record of proceedings and papers upon which said order is made, duly authenticated, and transmit the same to the Supreme Court of the United States.

C. H. HANFORD, *District Judge.*

(Indorsed:) Entry allowing appeal. Filed Jun. 13, 1898, in the U. S. district court. R. M. Hopkins, clerk, by H. M. Walthew, deputy.

18 In the United States district court for the district of Washington, northern division.

UNITED STATES *v.* MRS. GUE LIM, AH TONG, YEE YUEN, and Ah Quong.	No. 1136 in the northern division. Nos. 178, 179, and 181, respectively, in the western division.

Assignment of errors.

Afterwards, to wit, on the 13th day of June, 1898, in the June term of the above court, begun and holding in the city of Seattle, in the

northern division thereof, before the Honorable C. H. Hanford, judge, comes the United States of America, by Wilson R. Gay, United States attorney, and Charles E. Claypool, assistant United States attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

The court erred in construing the treaty with China of November 17th, 1880 (22 Stat., 13, art. 2), and holding that in pursuance thereof the wives and minor children of Chinese merchants lawfully dwelling within the United States were not excluded from entering, notwithstanding the noncompliance of such wives and minor children with the provisions of the sixth section of the act of Congress of July 5th, 1884 (1st Sup. R. S. (2nd edition), page 459).

For other errors appearing upon the record.

And the United States prays that the order and judgment aforesaid may be reversed, annulled, and held for naught, and for such other relief as may be proper in the premises.

WILSON R. GAY,
U. S. Attorney.

C. E. CLAYPOOL,
Assistant U. S. Attorney.

(Indorsed:) Assignment of error. Filed June 11, 1898, in the U. S. district court. R. M. Hopkins, clerk, by H. M. Walthew, deputy.

19 In the United States district court for the district of Washington, northern division.

UNITED STATES *vs.* MRS. GUE LIM, AH TONG, YEE YUEN, and AH QUONG.	No. 1136 in the northern division. Nos. 178, 179, and 181, respectively, in the western division.

Notice.

To Mrs. GUE LIM and to GEORGE S. BUSH, her attorney:

You are hereby notified that the United States intends to appeal from the order heretofore, to wit, on the 28th day of October, 1897, entered in the above cause, and that on the 13th day of June, A. D. 1898, at ten o'clock a. m., at the United States court room in the city of Seattle, within the said district, the United States, by its attorneys, will apply to the Honorable C. H. Hanford, judge, for an order allowing said appeal.

WILSON R. GAY,
U. S. Attorney.

C. E. CLAYPOOL,
Assistant U. S. Attorney.

Due personal service of the above notice acknowledged this 7th day of June, A. D. 1898.

GEO. S. BUSH,
Attorney for Defendant Mrs. Gue Lim.

(Indorsed:) Notice. Filed Jun. 13, 1898, in the U. S. district court. R. M. Hopkins, clerk, by H. M. Walthew, deputy.

20 In the United States district court for the district of Washington, northern division.

UNITED STATES *v.* MRS. GUE LIM, AH TONG, YEE YUEN, and AH QUONG.	No. 1136 in the northern division. Nos. 178, 179, and 181, respectively, in the western division.

Notice.

TO AH TONG, YEE YUEN, and AH QUONG, and to A. R. COLEMAN, their attorney:

You are hereby notified that the United States intends to appeal from the order heretofore, to wit, on the 28th day of October, 1897, entered in the above cause, and that on the 13th day of June, A. D. 1898, at ten o'clock a. m., at the United States court room in the city of Seattle, within the said district, the United States, by its attorneys, will apply to the Honorable C. H. Hanford, judge, for an order allowing said appeal.

WILSON R. GAY,
U. S. Attorney.

C. E. CLAYPOOL,
Assistant U. S. Attorney.

Due personal service of the above notice acknowledged this 6th day of June, A. D. 1898.

A. R. COLEMAN,
Attorney for Defendants Ah Tong, Yee Yuen, and Ah Quong.

(Indorsed:) Notice. Filed Jun. 13, 1898, in the U. S. district court. R. M. Hopkins, clerk., by H. M. Walthew, deputy.

21 United States district court for the district of Washington.

UNITED STATES *v.* MRS. GUE LIM ET AL.	No. 1136.

Precipe.

To the clerk of the above-entitled court:

You will please prepare transcript of the papers and proceedings in the case of the U. S. v. Mrs. Gue Lim, No. 1136 in the northern division, and the cases of the U. S. v. Ah Tong, Yee Yuen, and Ah Quong, Nos. 178, 179, and 181 in the western division, respectively, for use in the appeal of said cases, and notify this office when the same are complete.

C. E. CLAYPOOL,
Assistant United States Attorney.

(Indorsed:) Precipe. Filed Jun. 27, 1898. R. M. Hopkins, clerk; H. M. Walthew, deputy clerk.

22 In the United States district court for the district of Washington, northern division.

UNITED STATES *vs.* MRS. GUE LIM, AH TONG, YEE YUEN, and AH QUONG.	No. 1136, in the northern division. Nos. 178, 179, and 181, respectively, in the western division.

Citation.

United States of America, by the Honorable C. H. Hanford, judge of the district court for the district of Washington, to Mrs. Gue Lim, Ah Tong, Yee Yuen, and Ah Quong, the above-named defendants, and to Mr. George S. Bush and Mr. A. R. Coleman, their attorneys:

Whereas the United States has lately appealed to the Supreme Court of the United States from the order and decree lately rendered in the district court of the United States for the district of Washington, made in favor of you, the said Mrs. Gue Lim, Ah Tong, Yee Yuen, and Ah Quong, said appeal having been directed to be taken by the Department of Justice of the Government of the United States, you are hereby cited to appear before the said Supreme Court of the United States, in the city of Washington, D. C., within sixty days from this date, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Seattle, in the district of Washington, in the ninth circuit, this 28th day of June, in the year of our Lord one thousand eight hundred and ninety-eight

[SEAL.] C. H. HANFORD,
U. S. District Judge.

23 Service of the above citation by the delivery of a true copy thereof is acknowledged this 28th day of June, A. D. 1898.

GEO. S. BUSH,
Attorney for Mrs. Gue Lim.

Service of the above citation by the delivery of a true copy thereof is acknowledged this 29th day of June, A. D. 1898.

A. R. COLEMAN,
Attorney for Ah Tong, Yee Yuen, and Ah Quong.

(Indorsed:) Citation. Filed July 2, 1898, in the United States district court. R. M. Hopkins, clerk, by A. N. Moore, deputy.

24 In the United States commissioner's court, before the Honorable M. L. Clifford, United States commissioner.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
AH TONG, DEFENDANT.

Notice of appeal.

To the Honorable M. L. Clifford, United States commissioner, C. W. Ide, esq., United States marshal, and Honorable William H. Brinker, United States attorney:

You and each of you will take notice that the defendant, Ah Tong, in the above-entitled cause, hereby appeals from the judgment and decision

made and entered therein by the said M. L. Clifford, United States commissioner, on the 10th day of September, 1897, adjudging this defendant to be unlawfully in the United States, and ordering his deportation from said United States.

This appeal is taken to the Honorable C. H. Hanford, United States district judge for the district of Washington, at the city of Tacoma, in the western division of said district.

A. R. COLEMAN,
Attorney for said Defendant.

I hereby accept service and acknowledge receipt of a copy of the foregoing notice of appeal.

Filed Sept. 18", 1897, in the U. S. district court. R. M. Hopkins, clerk, by A. Reeves Ayres, deputy.

25 In the United States district court for the district of Washington, western division.

UNITED STATES OF AMERICA, PLAINTIFFS,
vs.
AH TONG, DEFENDANT. } No. 178.

Order.

Now, on this day, comes the above-named defendant, by A. R. Coleman, his attorney, and shows to the court that on the 10th day of September, 1897, the said defendant was, by M. L. Clifford, United States commissioner for the district of Washington, adjudged to be a Chinese laborer, unlawfully within the United States, and thereupon said commissioner ordered the said defendant to be deported from the United States to the Empire of China, and issued his writ of deportation directed to the marshal of the United States for the district of Washington, commanding him to deport and convey the said defendant to the Empire of China without unnecessary delay; that on the same day the said defendant, by his attorney, prayed an appeal from the judgment of the said commissioner to this court, and served written notice of such appeal upon said commissioner, and upon the marshal of the United States for the district of Washington, and upon the attorney of the United States for said district; and now prays this court to order the said marshal to suspend the execution of said writ of deportation until said appeal can be heard in this court and until the further order of this court in the premises, which said application and notice of appeal having been seen and carefully examined by the court:

It is ordered that the said appeal be properly docketed in this court, upon the payment of the lawful fee therefor, and that the marshal suspend the execution of the said writ of deportation until the fur-
26 ther order of this court.

Dated this 18th day of September, 1897.

C. H. HANFORD, *Judge.*

I hereby acknowledge service of the above order by delivery of a copy thereof to me this 18 day of September, 1897.

C. W. IDE,
United States Marshal.

Filed Sept. 18th, 1897. R. M. Hopkins, clerk, by A. Reeves Ayres, deputy.

27 In the district court of the United States for the district of Washington.

UNITED STATES OF AMERICA)
v.) No. 178.
AH TONG.)

Now on this 21st day of October, 1897, this cause coming on regularly to be heard upon the appeal of the above-entitled cause by the above-named defendant from the judgment of M. L. Clifford, esq., United States commissioner, adjudging the said Ah Tong, defendant, to be a Chinese laborer unlawfully in the United States, and ordering him, the said defendant, to be deported to China; the United States being represented by William H. Brinker, esq., United States attorney, and defendant being represented by A. R. Coleman, esq.; and thereupon the trial of the cause proceeded, and the court finds from the evidence heard upon said trial that the said Ah Tong is the minor child of a Chinese merchant doing business in the United States of America, and that he, the said defendant, is lawfully entitled to be and remain in the United States.

Wherefore, by reason of the law and the premises, it is ordered that the judgment of the said M. L. Clifford, United States commissioner, ordering said defendant to be deported to China, be, and the same is now reversed, and that the said Ah Tong is now discharged and the action against him is now dismissed.

C. H. HANFORD, *Judge.*

(Indorsed:) Order discharging defendant. Filed Oct. 21, 1897. R. M. Hopkins, clerk.

28 In the United States district court for the district of Washington, western division.

THE UNITED STATES)
v.) Nos. 178, 179, and 181.
AH TONG, YEE YUEN, AND AH QUONG.)

Agreed statement of facts.

These causes having by agreement been heard at the same time and with the case of the United States vs. Mrs. Gue Lim (being case No. 1136 in the United States district court for the district of Washington, northern division), it is hereby agreed and stipulated that the following are the facts upon which said causes were heard and determined:

First. That the defendants above named were born in China of parents lawfully married, and had resided in that country up to the time they

came to the United States to live with their respective fathers, and were still minors under the age of fifteen years.

Second. That the fathers of these boys were, and for a long time prior to the coming of the boys to this country had been, bona fide Chinese merchants lawfully residing and doing business in the city of Walla Walla, in this State, and had sent for their sons to come from China to live with them in Walla Walla, where they were residing with their fathers when arrested by a United States immigration officer.

Third. That the boys had never procured any certificate under section 6 of the act of 1882 as amended in 1884, but relied entirely upon the status of their fathers as merchants here to entitle them to come to this country, and upon that claim had been admitted by the collector of customs at Pt. Townsend.

C. E. CLAYPOOL,
Asst. U. S. Attorney.

A. R. COLEMAN,
Attorney for Defendants.

(Indorsed:) Statement of facts. Filed June 8, 1898. R. M. Hopkins, clerk, by Saml. D. Bridges, dept.

29 In the United States commissioner's court, before the Honorable M. L. Clifford, United States commissioner.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
YEE YUEN, DEFENDANT.

Notice of appeal.

To the Honorable M. L. Clifford, United States commissioner, C. W. Ide, esq., United States marshal, and Honorable William H. Brinker, United States attorney:

You and each of you will take notice that the defendant, Yee Yuen, in the above-entitled cause hereby appeals from the judgment and decision made and entered therein by the said M. L. Clifford, United States commissioner, on the 10th day of September, 1897, adjudging this defendant to be unlawfully in the United States, and ordering his deportation from said United States.

This appeal is taken to the Honorable C. H. Hanford, United States district judge for the district of Washington, at the city of Tacoma, in the western division of said district.

A. R. COLEMAN,
Attorney for said Defendant.

I hereby accept service and acknowledge receipt of a copy of the foregoing notice of appeal.

Filed Sept. 18th, 1897, in the U. S. district court. R. M. Hopkins, clerk, by A. Reeves Ayres, deputy.

30 In the United States district court for the district of Washington, western division.

UNITED STATES OF AMERICA, PLAINTIFFS,
vs.
YEE YUEN, DEFENDANT. } No. 179.

Order.

Now on this day comes the above-named defendant, by A. R. Coleman, his attorney, and shows to the court that on the 10th day of September, 1897, the said defendant was, by M. L. Clifford, United States commissioner for the district of Washington, adjudged to be a Chinese laborer unlawfully within the United States, and thereupon said commissioner ordered the said defendant to be deported from the United States to the Empire of China, and issued his writ of deportation, directed to the marshal of the United States for the district of Washington, commanding him to deport and convey the said defendant to the Empire of China without unnecessary delay; that on the same day the said defendant, by his attorney, prayed an appeal from the judgment of the said commissioner to this court, and served written notice of such appeal upon said commissioner, and upon the marshal of the United States for the district of Washington, and upon the attorney of the United States for said district, and now prays this court to order the said marshal to suspend the execution of said writ of deportation until said appeal can be heard in this court and until the further order of this court in the premises, which said application and notice of appeal having been seen and carefully examined by the court:

It is ordered that the said appeal be properly docketed in this court, upon the payment of the lawful fee therefor, and that the marshal suspend the execution of the said writ of deportation until the fur-
31 ther order of this court.

Dated this 18th day of September, 1897.

C. H. HANFORD, *Judge.*

I hereby acknowledge service of the above order by delivery of a copy thereof to me this 18 day of September, 1897.

C. W. IDE, *United States Marshal.*

(Indorsed:) Order allowing appeal. Filed Sept. 18, 1897. R. M. Hopkins, clerk. By A. Reeves Ayres, deputy.

32 In the district court of the United States for the district of Washington.

UNITED STATES OF AMERICA
v.
YEE YUEN. } No. 179.

Now on this 21st day of October, 1897, this cause coming on regularly to be heard upon the appeal of the above-entitled cause by the above-named defendant from the judgment of M. L. Clifford, esq., United States commissioner, adjudging the said Yee Yuen, defendant, to be a Chinese laborer unlawfully in the United States, and order-

ing him, the said defendant, to be deported to China, the United States being represented by William H. Brinker, esq., United States attorney, and defendant being represented by A. R. Coleman, esq.; and thereupon the trial of the cause proceeded, and the court finds from the evidence heard upon the said trial that the said Yee Yuen is the minor child of a Chinese merchant doing business in the United States of America, and that he, the said defendant, is lawfully entitled to be and remain in the United States.

Whereupon, by reason of the law and the premises, it is ordered that the judgment of the said M. L. Clifford, United States commissioner, ordering said defendant to be deported to China, be and the same is now reversed, and the said Yee Yuen is now discharged, and the action against him is now dismissed.

C. H. HANFORD, *Judge.*

(Indorsed:) Order discharging defendant. Filed Oct. 21, 1897. R. M. Hopkins, clerk.

33 In the United States district court for the district of Washington, western division.

THE UNITED STATES
vs.
AH TONG, YEE YUEN, AND AH QUONG. } Nos. 178, 179, and 181.

Agreed statement of facts.

These causes having by agreement been heard at the same time and with the case of The United States vs. Mrs. Gue Lim (being case No. 1136 in the United States district court for the district of Washington, northern division), it is hereby agreed and stipulated that the following are the facts upon which said causes were heard and determined:

First. That the defendants above named were born in China of parents lawfully married, and had resided in that country up to the time they came to the United States to live with their respective fathers, and were still minors under the age of fifteen years.

Second. That the fathers of these boys were, and for a long time prior to the coming of the boys to this country had been, bona fide Chinese merchants lawfully residing and doing business in the city of Walla Walla, in this State, and had sent for their sons to come from China to live with them in Walla Walla, where they were residing with their fathers when arrested by a United States immigration officer.

Third. That the boys had never procured any certificates under section 6 of the act of 1882, as amended in 1884, but relied entirely upon the status of their fathers as merchants here to entitle them to come to this country, and upon that claim had been admitted by the collector of customs at Pt. Townsend.

C. E. CLAYPOOL,
Assistant U. S. Atty.

A. R. COLEMAN,
Attorney for Defendants.

(Indorsed:) Statement of facts. Filed June 8, 1898. R. M. Hopkins, clerk, by Saml. D. Bridges, dep.

34 *In the United States commissioner's court, before the Honorab'e M. L. Clifford, United States commissioner.*

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
AH QUONG, DEFENDANT.

Notice of appeal.

To the Honorable M. L. Clifford, United States commissioner; C. W. Ide, esq., United States marshal, and Honorable William H. Brinker, United States attorney:

You and each of you will take notice that the defendant, Ah Quong, in the above-entitled cause hereby appeals from the judgment and decision made and entered therein by the said M. L. Clifford, United States commissioner, on the 10th day of September, 1897, adjudging this defendant to be unlawfully in the United States and ordering his deportation from said United States.

This appeal is taken to the Honorable C. H. Hanford, United States district judge for the district of Washington, at the city of Tacoma, in the western division of said district.

A. R. COLEMAN,
Attorney for said Defendant.

I hereby accept service and acknowledge receipt of a copy of the foregoing notice of appeal.

(Indorsed:) U. S. vs Ah Quong. Filed Sept. 18", 1897, in the U. S. district court. R. M. Hopkins, clerk, by A. Reeves Ayres, deputy.

35 In the United States district court for the district of Washington, western division.

UNITED STATES OF AMERICA, PLAINTIFFS,
vs.
AH QUONG, DEFENDANT. } No. 181.

Order.

Now on this day comes the above-named defendant, by A. R. Coleman, his attorney, and shows to the court that on the 10th day of September, 1897, the said defendant was by M. L. Clifford, United States commissioner for the district of Washington, adjudged to be a Chinese laborer unlawfully within the United States, and thereupon said commissioner ordered the said defendant to be deported from the United States to the Empire of China, and issued his writ of deportation directed to the marshal of the United States for the district of Washington, commanding him to deport and convey the said defendant to the Empire of China without unnecessary delay; that on the same day the said defendant, by his attorney, prayed an appeal from the judgment of the said commissioner to this court, and served written notice of such appeal upon said com-

missioner, and upon the marshal of the United States for the district of Washington, and upon the attorney of the United States for said district, and now prays this court to order the said marshal to suspend the execution of said writ of deportation until said appeal can be heard in this court and until the further order of this court in the premises, which said application and notice of appeal having been seen and carefully examined by the court:

It is ordered that the said appeal be properly docketed in this court upon the payment of the lawful fee therefor, and that the marshal
36 suspend the execution of the said writ of deportation until the further order of this court.

Dated this 18th day of September, 1897.

C. H. HANFORD, *Judge.*

I hereby acknowledge service of the above order by delivery of a copy thereof to me this 18 day of September, 1897.

C. W. IDE,
United States Marshal.

(Indorsed:) Filed Sept. 18, 1897. R. M. Hopkins, clerk, by A. Reeves Ayres, deputy.

37 In the district court of the United States for the district of Washington.

UNITED STATES OF AMERICA
v.
AH QUONG. } No. 181.

Now, on this 21st day of October, 1897, this cause coming on regularly to be heard upon the appeal of the above-entitled cause by the above-named defendant from the judgment of M. L. Clifford, esq., United States commissioner, adjudging the said Ah Quong, defendant, to be a Chinese laborer unlawfully in the United States and ordering him, the said defendant, to be deported to China, the United States being represented by William H. Brinker, esq., United States attorney, and defendant being represented by A. R. Coleman, esq., and thereupon the trial of the cause proceeded, and the court finds from the evidence heard upon said trial that the said Ah Quong is the minor child of a Chinese merchant doing business in the United States of America, and that he, the said defendant, is lawfully entitled to be and remain in the United States.

Wherefore, by reason of the law and the premises, it is ordered that the judgment of the said M. L. Clifford, United States commissioner, ordering said defendant to be deported to China, be and the same is now reversed, and the said Ah Quong is now discharged, and the action against him is now dismissed.

C. H. HANFORD, *Judge.*

(Indorsed:) Order discharging defendant. Filed Oct. 21, 1897. R. M. Hopkins, clerk.

38 In the district court of the United States for the district of Washington.

UNITED STATES
v.
MRS. GUE LIM. } No. 1136 in the northern division.

UNITED STATES
v.
AH TONG. } No. 178 in the western division.

UNITED STATES
v.
YEE YUEN. } No. 179 in the western division.

UNITED STATES
v.
AH QUONG. } No. 181 in the western division.

UNITED STATES OF AMERICA,
District of Washington, ss.

I, R. M. Hopkins, clerk of the district court of the United States for the district of Washington, do hereby certify the foregoing thirty-seven (37) typewritten pages, numbered from one (1) to thirty-seven (37), both inclusive, to be a full, true, and correct copy of the record and of all proceedings had in the above-entitled causes, and that the same constitutes the transcript of the record upon appeal from the district court of the United States for the district of Washington to the Supreme Court of the United States in said causes wherein the United States of America is appellant, and Mrs. Gue Lim, Ah Tong, Yee Yuen, and Ah Quong are appellees.

I do further certify that the cost of preparing and certifying said transcript on appeal is the sum of nine dollars and fifty-five cents ($9.55), and that the same will be made a part of and included in my quarterly account for fees against the United States for the quarter ending September 30, 1898.

In testimony whereof I have hereunto set my hand and affixed the seal of said district court this 15th day of August, 1898.

[SEAL.] R. M. HOPKINS,
Clerk United States District Court, District of Washington.

39 In the United States district court for the district of Washington, northern division.

UNITED STATES
vs.
MRS. GUE LIM, AH TONG, YEE YUEN and AH QUONG. } No. 1136, in the northern division; Nos. 178, 179, and 181, respectively, in the western division.

Citation.

United States of America, by the Honorable C. H. Hanford, judge of the district court for the district of Washington, to Mrs. Gue Lim, Ah Tong, Yee Yuen, and Ah Quong, the above-named defendants, and to Mr. George S. Bush and Mr. A. R. Coleman, their attorneys:

Whereas the United States has lately appealed to the Supreme Court of the United States from the order and decree lately rendered in the

district court of the United States for the district of Washington, made in favor of you, the said Mrs. Gue Lim, Ah Tong, Yee Yuen, and Ah Quong, said appeal having been directed to be taken by the Department of Justice of the Government of the United States, you are hereby cited to appear before the said Supreme Court of the United States, in the city of Washington, D. C., within sixty days from this date, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Seattle, in the district of Washington, in the ninth circuit, this 28th day of June, in the year of our Lord one thousand eight hundred and ninety-eight.

[SEAL.] C. H. HANFORD,
U. S. District Judge.

40 Service of the above citation, by the delivery of a true copy thereof, is acknowledged this 28th day of June, A. D. 1898.

GEO. S. BUSH,
Attorney for Mrs. Gue Lim.

Service of the above citation, by the delivery of a true copy thereof, is acknowledged this 29th day of June, 1898.

[SEAL.] A. R. COLEMAN,
Attorney for Ah Tong, Yee Yuen, and Ah Quong.

(Indorsed:) No. 1136. In the district court of the United States for the district of Washington, northern division. United States vs. Mrs. Gue Lim et al. Citation filed July 2, 1898, in the U. S. district court. R. M. Hopkins, clerk, by A. N. Moore, deputy.

(Indorsement on cover:) Case No. 16967. Washington D. C. U. S. Term No. 382. The United States, appellant, vs. Mrs. Gue Lim, Ah Tong, Yee Yuen, and Ah Quong. Filed August 27, 1898.

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

THE UNITED STATES, APPELLANT,
v.
MRS. GUE LIM, AH TONG, YEE YUEN, and AH QUONG. } No. 123.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This case arises under the Chinese exclusion laws, and comes before the court on appeal by the United States from the judgment of the district court of the United States for the district of Washington. The parties defendant were arrested as found unlawfully in the United States, Mrs. Gue Lim, because she was alleged to be a Chinese laborer without a certificate of registration as

such, and the other appellees because on other grounds they were held to be without legal authority to remain in the United States. It was afterwards agreed (Rec., p. 8) as to Gue Lim that she is a Chinese woman, the lawful wife of a Chinese merchant, one Fook Kee, engaged in business in the State of Washington within the statutory test of such character (act of November 3, 1893, sec. 2, 28 Stat., 7), and lawfully domiciled in the United States; that Gue Lim arrived at the port of Tacoma, Wash., from China, accompanied by her husband (who appears to have been returning to the United States after a temporary absence), it being, however, the woman's first arrival here; and that the collector of customs, acting under general instructions of the Treasury Department, allowed her to land in May, 1897, without producing the certificate provided for by section 6 of the act of July 5, 1884. Her arrest followed in October, 1897.

As to the other appellees, the agreed statement of facts shows (p. 14) that they were born in China of parents lawfully married, and had resided in that country up to the time they came to the United States to live with their respective fathers, and that they were minors of tender years; that the fathers were for a long time prior to the coming of the boys to this country *bona fide* Chinese merchants, lawfully residing and doing business in the State of Washington, who had sent for their sons to come from China to live with them, and the boys were residing with their fathers when arrested by the United States immigration officer, and had never procured any

certificate under section 6 of the act of 1884, relying upon the status of their fathers as merchants here to entitle them to come to this country, upon which claim they had been admitted by the collector of customs at Port Townsend.

It appears that the Government claim that Gue Lim was a Chinese laborer was abandoned, because the assignment of errors (pp. 9, 10) places error on the court below in holding that, in pursuance of the treaty with China of November 17, 1880 (22 Stat., 826, Art. II), the wives and minor children of Chinese merchants lawfully dwelling within the United States were not excluded from entering, although they did not produce the certificate required by section 6 of the act of July 5, 1884 (23 Stat., 115). The provision of said section is as follows:

> That in order to the faithful execution of the provisions of this act every Chinese person, other than a laborer, who may be entitled by said treaty or this act to come within the United States, and who shall be about to come to the United States, shall obtain the permission of and be identified as so entitled by the Chinese Government, or of such other foreign government of which at the time such Chinese person shall be a subject, in each case to be evidenced by a certificate issued by such Government, which certificate shall be in the English language, and shall show such permission, with the name of the permitted person in his or her proper signature, and which certificate shall state the individual, family, and tribal name in full; title or official rank, if any; the age, height, and all physical peculiarities; former and present occupation or profession, when and where and how long pursued, and place of residence of the

> person to whom the certificate is issued, and that such person is entitled by this act to come within the United States.
>
> If the person so applying for a certificate shall be a merchant, said certificate shall, in addition to above requirements, state the nature, character, and estimated value of the business carried on by him prior to and at the time of his application as aforesaid. * * *

It appears further that the defendants were taken before a United States commissioner for the district of Washington and adjudged to be Chinese laborers unlawfully within the United States, and were ordered to be deported to the Empire of China, and thereupon an appeal was taken to the United States district court, and the execution of the writ of deportation was suspended pending the same. (Rec., pp. 13, 16, 18.) After hearing, the district court held that Gue Lim is the wife of a Chinese merchant, lawfully domiciled and doing business as a merchant, and is not a laborer nor a person excluded by the laws of the United States from coming to or remaining in the United States, and she was therefore discharged from custody and the cause dismissed (pp. 2, 3). This result appears to have been accepted, *mutatis mutandis*, as applicable to the case of the boys; and thereupon the United States took an appeal to the Supreme Court of the United States as to all the parties defendant. The opinion of the court below will be found at pages 3–8 of the record.

Although it appears that all the applicants had been admitted by the collector, their subsequent arrest on the charge of being unlawfully within the country, in order

to determine their right to enter, was proper, because it is provided by the act of August 18, 1894 (28 Stat., 390), "that in every case where an alien is excluded from admission into the United States * * * the decision of the appropriate immigration or customs officers, if adverse to the admission of such alien, shall be final unless reversed on appeal to the Secretary of the Treasury." As was said by Judge Lacombe in *In re Li Foon* (80 Fed. Rep., 881, 883):

> This makes the decision a final adjudication only when adverse to admission. If the immigration or customs officer decides to allow the immigrant to enter, such decision has no more force as a controlling adjudication, when the question of right to be or remain in the United States comes before court or commissioner, than it had under section 9 of the act of 1882, as amended in 1884, which was before the Supreme Court in *United States* v. *Jung Ah Lung*, supra.

The contention of the applicants below was, and the opinion of the court is, that there was a right of entry secured to the wife and minor child of a Chinese merchant lawfully dwelling in the United States under the treaty of 1880 (22 Stat., 826), and that the applicants were not only entitled to enter this country, but entitled to enter without producing the certificate required of privileged Chinese persons by the sixth section of the act of July 5, 1884 (23 Stat., 115). The appeal, therefore, draws in question the construction of the treaty of 1880, and is therefore well taken direct to this court under section 5 of the circuit court of appeals act (26 Stat., 826), the fifth clause of the classification of which

section, of cases appealable directly to the Supreme Court, is: "In any case in which the constitutionality of any law of the United States, or the validity *or construction* of any treaty made under its authority, is drawn in question."

The point now to be determined as drawn from the record, regarding both the treaty of 1880 and the act of 1884 may therefore be stated as follows: May the valid wife and legitimate children of tender years of a Chinese merchant, duly domiciled and doing business in this country, enter the United States and remain there without producing upon their original arrival the certificate required by section 6 of the act of 1884?

ARGUMENT.

The United States at the outset disclaims any intention to contend against the fundamental and natural right (which, in the absence of provisions of law expressly denying this natural right perhaps exists, irrespective of any treaty), of the valid wife and legitimate minor children of Chinese merchants, not being in fact laborers, to come to and remain in this country whether they accompany the husband and father on his original entry, or follow him after he has secured a legal domicile here. But the United States does contend that such wife and children may not be permitted to enter originally without the production of the required certificate. The question of whether on reentry after a temporary absence a certificate would be necessary is not now involved. It may be that that case would be assimilated to the case of a returning merchant under the decision of the *Lau Ow Bew* case

(144 U. S., 47); that is, that the right of the merchant and the applicants' relation to him would operate to extend his status to them, or confer upon them similar domiciliary rights, and therefore that his wife and children, like himself, upon a reentry would not need to produce the certificate required by the act of 1884.

To begin with, let us examine the relation of the wife to the husband, and the extension to her of the status of the husband, in its more general aspect under the Chinese exclusion laws.

(*a*) *The relation of wife and children to a father.*

In the case of *Ah Moy* (21 Fed. Rep., 785), Judge Sawyer was of opinion that the Chinese exclusion acts applying to laborers as a class, the wife of a Chinese person has the same status as the husband and belongs to the class to which he belongs, whether she is in fact a laborer or not, and the husband being a laborer in that case, this operated to exclude the wife. The opinion of Mr. Justice Field in that case holds that a Chinese wife must be regarded as a distinct person, and that to be entitled to admission she must furnish a certificate as required either by section 4 or section 6 of the act of 1884. It may well be, however, in view of the plain purpose of the Chinese exclusion laws, that the rule would not work both ways; in other words, that the husband's status might be attributed to the woman if he were a laborer, so as to exclude her even if she were not herself a laborer, whether she produced a certificate showing that individually she was of the permitted class

or not, and, on the other hand, that if her husband was of the permitted class she would have to show that she was not a laborer in fact; and even if not so, would have to produce the required certificate even if her husband produced one on his original entry, or being domiciled here, did not require one upon reentry under the Lau Ow Bew decision, his wife coming for the first time and accompanying him on his return. The latter is the exact variation of the question now before the court.

In other words, a Chinese woman might be excluded because her husband was a laborer, but the permitted status of a husband as a merchant, while so far cast upon the wife as to entitle her to entry if she was not in fact a laborer, would not extend sufficiently to admit her on his certificate and without one of her own if she accompanied him on his original entry, or without any certificate if she followed him and came in alone on her own original entry.

The decision of the district court in the case before the court was based upon the decision of Judge Deady in the case *In re Chung Toy Ho* (42 Fed. Rep., 398), Judge Deady holding that the wife and minor child of a Chinese merchant lawfully dwelling within the United States are not of the laboring class and therefore are not excluded from entry, and that it is impracticable for such persons to comply with the certificate requirements of the law, and if those requirements are held to be applicable to them, they must necessarily be deprived of rights guaranteed by the treaty of 1880, which recognized the inherent rights based upon the family relation.

(*b*) *The treaties and statute.*

Examining the law involved in the question, Article II of the treaty of 1880 is in the following language:

> Chinese subjects, whether proceeding to the United States as teachers, students, merchants, or from curiosity, together with their body and household servants * * * shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities, and exemptions which are accorded to the citizens and subjects of the most favored nation.

At this point it may be observed that in the court below it appears to have been contended that since the treaty allowed Chinese merchants to bring into the United States their body and household servants, they were entitled to have their wives and children with them without compliance on the part of such wives and children with the acts of Congress; but this suggestion really begs the question. While the treaty stipulated for the presence of servants, no doubt in view of the fact that Chinese merchants or travelers could not be acceptably served in the United States except by their native servants, it must always be remembered that the provisions of the act of 1884, presently to be considered, followed the treaty of 1880 and was a later and fuller expression of the legislative will, and became a law, as the title of the act of 1882 which it amended shows, in order to carry into effect the treaty stipulations; and inasmuch as the servants of Chinese merchants, as well as their wives and children, were Chinese persons, and plainly covered by the phrase of the act "every Chinese person," there is no good ground

for the contention that Chinese merchants may bring either their servants or their wives and children without producing the certificate required by the act for each person accompanying them.

Section 6 of the act of July 5, 1884, in full, provides:

> That in order to the faithful execution of the provisions of this act, every Chinese person, other than a laborer, who may be entitled by said treaty or this act to come within the United States, and who shall be about to come to the United States, shall obtain the permission of and be identified as so entitled by the Chinese Government, or of such other foreign government of which at the time such Chinese person shall be a subject, in each case to be evidenced by a certificate issued by such Government, which certificate shall be in the English language, and shall show such permission, with the name of the permitted person in his or her proper signature, and which certificate shall state the individual, family, and tribal name in full, title or official rank, if any, the age, height, and all physical peculiarities, former and present occupation or profession, when and where and how long pursued, and place of residence of the person to whom the certificate is issued, and that such person is entitled by this act to come within the United States.
>
> If the person so applying for a certificate shall be a merchant, said certificate shall, in addition to above requirements, state the nature, character, and estimated value of the business carried on by him prior to and at the time of his application as aforesaid: *Provided*, That nothing in this act nor in said treaty shall be construed as embracing within the meaning of the word "merchant," hucksters, peddlers, or those engaged in taking, drying, or otherwise pre-

serving shell or other fish for home consumption or exportation.

If the certificate be sought for the purpose of travel for curiosity, it shall also state whether the applicant intends to pass through or travel within the United States, together with his financial standing in the country from which such certificate is desired.

The certificate provided for in this act, and the identity of the person named therein, shall, before such person goes on board any vessel to proceed to the United States, be visćed by the indorsement of the diplomatic representatives of the United States in the foreign country from which such certificate issues, or of the consular representative of the United States at the port or place from which the person named in the certificate is about to depart; and such diplomatic representative or consular representative whose indorsement is so required is hereby empowered, and it shall be his duty, before indorsing such certificate as aforesaid, to examine into the truth of the statements set forth in said certificate, and if he shall find upon examination that said or any of the statements therein contained are untrue it shall be his duty to refuse to indorse the same.

Such certificate visćed as aforesaid shall be prima facie evidence of the facts set forth therein, and shall be produced to the collector of customs of the port in the district in the United States at which the person named therein shall arrive, and afterwards produced to the proper authorities of the United States whenever lawfully demanded, and shall be the sole evidence permissible on the part of the person so producing the same to establish a right of entry into the United States; but said certificate may be controverted and the facts therein stated disproved by the United States authorities.

It seems to have escaped attention in the court below that the convention with China of December 8, 1894 (28 Stat., 1210), by which among other things the coming of Chinese laborers to the United States was absolutely prohibited for a further period of ten years from the date of the said treaty, provided by Article III that—

> The provisions of this convention shall not affect the right at present enjoyed of Chinese subjects, being officials, teachers, students, merchants, or travelers for curiosity or pleasure, but not laborers, of coming to the United States and residing therein. To entitle such Chinese subjects as are above described to admission into the United States, they may produce a certificate from their Government, or the Government where they last resided, viséed by the diplomatic or consular representative of the United States in the country or port whence they depart.

Here is the distinct admission by the Chinese Government that the immunities accorded to certain Chinese persons by the treaty of 1880 are so far modified that all the permitted Chinese subjects may produce the certificate for identification, and in view of the intervening laws of the United States requiring the certificate, it is obvious that "may" in this treaty is necessarily in practice to be read as "must."

We are unable to perceive in the record any reason for doubting that the rights of the applicants are dependent upon a construction of both treaties, and that the privileges supposed to be accorded to them under the treaty of 1880 are to be read in the light of the modification in the treaty of 1894, by which the necessity of a certificate is recognized as well as in the light of the intermediate statutes.

(c.) *Decisions of lower courts.*

The decisions on the point in the lower courts have been as follows:

In *In re Ah Quan* (21 Fed. Rep., 182), the United States circuit court for the district of California held that the language of the act of 1884 embraces every Chinese individual; that since the act does not say that every Chinese person except the wife or child of one having a certificate shall produce a certificate, the certificate required of returning Chinese can not entitle the wife or children of the holder to enter with him; there must be either an independent certificate for each, or else the certificate issued to the husband or father must contain also a certificate of the facts required both as to the wife and each minor child sought to be introduced.

Much stronger, surely, is the case where the wife and children do not accompany the husband and father, but follow him, as the children did in the present case. The court below, in the case at bar, seemed to see in the opinion in the *Ah Quan* case only a decision excusing Chinese laborers who were in the United States on November 17, 1880, and who departed from the United States prior to June 6, 1882, from producing the certificate required by section 4 of the original act, or who departed before July 5, 1884, from producing the certificate required by the act of that date; and thinks it is apparent that the court did not consider the case of the wife or minor child of a Chinese merchant duly domiciled in the United States previous to the coming of the wife or the child. But the language of the court as shown on pages 186 and 187 is broad enough to embrace the case

stated, and we contend necessarily embraces it, repeating that the requirement of a certificate where the wife or children do not accompany the husband is even more obviously essential than when they do.

In the case of the *Chinese Wife* (*In re Ah Moy*), id., 785, referred to *supra*, the woman was the wife of a Chinese laborer who resided in the United States November 17, 1880, and until September, 1883, when he made a visit to China and there married his wife and returned to the United States in September, 1884, bringing his wife with him. He produced on his return a certificate obtained before his departure from this country to enable him to return to the United States. The view of Justice Field was that his certificate gave him no authority to bring another person with him. "The fiction of the law as to the unity of the two spouses does not apply under the restriction act. As a distinct person she must be regarded, and therefore must furnish the certificate required either by section 4 or by section 6 of the act of 1884;" the contention of the United States in that case being that she partook of her husband's status of laborer and should therefore be required to furnish a laborer's certificate to establish her right to enter the United States. The learned justice, however, thought that the wife would not be deemed to follow the husband's calling any more than the wife of a lawyer, physician, or *merchant;* that she is therefore to be regarded as a person other than a laborer, and as such required to present the certificate provided by section 6 of the act of 1884, which "is made the only evidence permissible on the part of the person seeking to enter the United States." Justice Field's

opinion recognizes, as follows, the fundamental human relation, which is apparently present to the mind of the court in several of the decisions:

> We are not insensible to the earnest remarks of counsel as to the hardship of separating man and wife. With our notions of the sacredness of that relation, they appeal with striking force. But here the relation was voluntarily assumed in the face of the law forbidding her coming to the United States without the required certificate; and they need not now be separated. He can return with and protect his child-wife in the Celestial Empire.

The opinion of Justice Sawyer in that case excluded the woman because she took upon herself by her marriage the status of the husband as one of the class who are not now permitted to enter the United States without reference to her former status; and as she could not produce in the nature of the case the return certificate as the only evidence of a laborer's right to reenter the United States, and as there is no exception in any of the language of the act of the wives and minor children of Chinese laborers, the petitioner must be excluded; further, that, even if the wife of a Chinese laborer entitled to return and bring his family with him is fairly covered by the language of the treaty of 1880, yet the provisions of the act are inconsistent and in conflict with the treaty so construed, and the act, being later than the treaty, annuls or repeals it. Judge Sawyer also says, conceding for the sake of argument the separate character of the wife:

> But if a wife in the situation of the petitioner does not take the status of her husband, and if the re-

striction act as amended in 1884 is applicable to her case, then she has an individual personal right to enter the United States as not being a Chinese laborer, without regard to her husband; but in that case the certificate prescribed by section 6 is the only evidence upon which she can enter. The certificate she has not got, and the result is the same. I think the former the proper view.

The court below in the present case evidently is of opinion that the preexistent right of the domiciled merchant is to be fully attributed to his wife and children, and distinguishes the earlier cases on that ground. For instance, the court intimates this difference in reference to the *Ah Quan* case, where returning Chinese laborers and Chinese laborers entering for the first time are apparently both considered, and the latter particularly perhaps, with reference to the wife and children, although the facts are not clear. But in the case of the *Chinese Wife* the husband was returning, and no difference can be perceived between the case of a laborer who had acquired a domicile and was entitled to return upon production of the certificate in the form appropriate at the particular time and the case of a merchant who had acquired a domicile, except that it has now been held under the *Lau Ow Bew* case that a merchant upon reentry need not produce the certificate of the act of 1884. The right of the wife in the merchant case would not be different or greater than her right in the laborer case (at all events as the law was, if not as it is at present), and in either case we contend that she should produce a certificate if she accompanies her husband when she enters for the first time, and

perhaps with greater reason when she follows him, upon her own original entry. As before remarked, we are not at all concerned now with what her right might be upon her reentry if she had duly and legally obtained admission on her original entry.

The court below also, in commenting upon the case of *Wo Tai Li* (48 Fed. Rep., 668), says there is nothing in the report of that case to show that the husband was domiciled in this country, or that Judge Hoffman considered the question as to the right of Chinese persons not laborers having a domicile in the United States to bring their wives and minor children to dwell with them. Here, again, it may be said, although that case will be considered *infra*, that the language of the decision admits of no exception, nor, as has just been suggested, can any difference be perceived between the right of Chinese laborers who are duly domiciled here and have the right of return to bring their wives and minor children to dwell with them and the right of Chinese persons not laborers and of the permitted classes to do so, except that the latter class may reenter without a certificate under the *Law Ow Bew* decision.

In the case of *In re Chung Toy Ho et al.* (42 Fed. Rep., 398) the petitioners were the wife and child of a well-known Chinese merchant, resident for some years in Portland, Oreg., who visited China, and on his return brought the petitioners with him, they having never been in the United States. The merchant himself produced the certificate which was then supposed to be required of him, although he was reentering, but the petitioners had

no certificate. Judge Deady stated the decision himself in the syllabus, as follows:

> The wife and children of a Chinese merchant who is entitled under article II of the treaty of 1880 and section 6 of the act of 1884 to come within and dwell in the United States, are entitled to come into the country with him or after him as such wife and children without the certificate prescribed in said section 6.

The opinion of the court emphasizes the purpose of the Chinese legislation as the exclusion of Chinese laborers from coming or returning to the United States. "The other classes—'teacher, student, and merchant'—are not required to have certificates before they can be admitted into the country because their admission is intended to be restrained or limited, but to prevent laborers from being admitted in the guise or in the character of such classes." The court states that there is no limitation of the right of these classes to come within and dwell in the United States. The case of the petitioners is held not to be within the mischief that the exclusion act was intended to remedy, and the decision is that they are not the persons contemplated by Congress in section 6 of the act of 1884, although in view of the words "every Chinese person" in that section they are considered to be within the letter of the statutes. The gist of the decision is shown by the following passage:

> Chinese women are not teachers, students, or merchants, and therefore they can not as such obtain the certificate necessary to show they belong to the favored class, but as the wives and children of "teachers, students, and merchants" they do in fact

belong to such class, and the proof of such relation with a person of this class, entitled to admission, is plenary evidence of such fact.

It is respectfully submitted that the answer to this is that though the proof of the relation may be plenary evidence of the belonging in fact to the permitted class, it it is not the evidence which the statute plainly requires of every Chinese person. The relation will prove quite enough if it proves the status; it should not be accepted also in lieu of the statutory requirements. There is nothing in the law to prevent a certificate being issued to a person as the wife or child of a teacher, student, or merchant. The opinion proceeds:

> It is impossible to believe that parties to this treaty [the treaty of 1880] which permits the servants of a merchant to accompany him, ever contemplated the exclusion of his wife and children. And the reason why they are not expressly mentioned, as entitled to such admission, is found in the fact that the domicile of the wife and children is that of the husband and father, and that the concession to the merchant of the right to enter the United States, and dwell therein at pleasure, fairly construed, does include his wife and minor children.

As we have before pointed out, we do not contend against the natural right under the treaty of the petitioners in this case, but against the construction by which, under the general language of the treaty, the earlier enactment is allowed to override and ignore the plain provisions of the later law, and the wife and children of a merchant held to be entitled to enter with him or after him, as well as his body and household servants, without

the prescribed certificate. We respectfully submit and insist that all such accompanying or following members of his household must produce the certificate which the law exacts. Judge Deady, conceding that the case *in re Tung Yeong* (19 Fed. Rep., 184), is not authority on the question whether the words "every Chinese person" in section 6 of the act are limited to teachers, students, and merchants, and did not include their wives and children, because said decision was made before the act of July 5, 1884, was passed, holds that it is authority in favor of the rights of the wife and children of a Chinese merchant under the treaty of 1880. So it is, but in relation to a right theretofore general, and modified, restrained, and regulated by the subsequent statute and treaty requirements.

In this opinion, upon which the court below in the case at bar chiefly relies, the hardship of such cases as referred to by Justice Field, *supra*, again comes forward both in the portion of Judge Hoffman's opinion in the *Tung Yeong* case quoted, and in the following concluding passage of Judge Deady:

> My conclusion is that under the treaty and statute, taken together, a Chinese merchant who is entitled to come into and dwell in the United States is thereby entitled to bring with him and have with him his wife and children. The company of one and the care and custody of the other are his by natural right, and he ought not to be deprived of either unless the intention of Congress to do so is clear and unmistakable.

In re Wo Tai Li (48 Fed. Rep., 668), was the case of a wife of a Chinese actor who was held by the district

court for the northern district of California upon her application to enter the United States without producing the certificate required by section 6 of the act of 1884 not to be entitled to show her right to land by other evidence, because the meaning of the act is obvious. It is that the certificate is required to be produced by all Chinese persons other than laborers claiming the right to enter this country, and such certificate is to be the sole evidence of their right to land. Unless, therefore, the whole section is to be disregarded and the obvious intention of Congress frustrated, the certificate must in all cases be exacted."

The court below here also thought that the court had failed to consider the question as to the right of Chinese persons not laborers having a domicile in the United States to bring their wives and minor children, because there was nothing in the report of the case cited to show that the husband was domiciled in this country. But the language of Judge Hoffman's opinion is properly universal and exclusive, in accordance with the Government contention, namely, that, irrespective of the status of the husband as a laborer possessing a right to return, or as a merchant, and irrespective of the acquired domicile of the husband in either case, a wife and child on original entry must produce the certificate.

This was the conclusion in *In re Li Foon* (80 Fed. Rep., 881), which was disapproved by Judge Hanford in the case at bar. Li Foon was the infant son (that is, about 12 years old) of a Chinese merchant lawfully residing here, and on the authority of the cases which we

have just reviewed and of the case of *Wan Shing* v. *United States* (140 U. S., 424), the petitioner, who had never obtained a certificate, and therefore could not produce one, was denied admission.

In *In re Lee Yee Sing* (85 Fed. Rep., 635) Judge Hanford states that he adheres to the opinion rendered in the case at bar, namely, that the wives and minor children of Chinese merchants lawfully domiciled and engaged in trade in the United States are not laborers, and not, within the intent of the acts of Congress, excluded from entering and dwelling with their husbands and fathers within the United States. But he does not in that case pursue the question to the same conclusion, viz, that such wives and children may enter without the certificate prescribed by the act of 1884.

(*d*) *Executive opinions and rulings.*

As to executive rulings upon the question, these have followed the decisions of the courts denying admission (see Op. Sol. Treas., July 26, 1890; Syn. Dec. 17445; Op. Atty. Gen., Nov. 3, 1898); and although by the opinion of the Solicitor of the Treasury of September 7, 1895, which, as was expressly stated therein, is not to be taken as a precedent, a boy 12 years old, the son of a resident Chinese merchant, was allowed to enter without a certificate, opinions of the same officer of March 19, 1896, October 1, 1896, and August 3, 1898, hold the contrary. The above rulings, so far as unpublished or not yet published, will be found in an appendix to this brief.

(*e*) *The general purpose of the exclusion laws: strict construction necessary.*

The question may now be considered briefly with reference to the general purpose and bearing of Chinese legislation. It rests, as has been determined by the court, upon the sovereign and absolute right of the Government to exclude or expel aliens; and while treaty stipulations involving the plighted faith or solemn obligations of the Government are not lightly to be disregarded, it is clearly held that the determination of the question whether existing conditions and the national well-being and necessities demand the abrogation of treaty stipulations has been fully committed to Congress, and that the later expression of the legislative will is the significant one, even if it overrides previous treaty obligations.

The provisions of the Chinese exclusion laws are *strictí juris*. To bring an applicant within the allowance or protection conceded to enter or remain in the country, the conditions of the right must be exactly pursued. It is not necessary to contend in this case for what seems to be the proper theory of the Chinese exclusion laws, viz, that although the prohibition of the entry of laborers only was originally, and is still more particularly, aimed at, nevertheless the fact is that only those who are expressly permitted are entitled to admission, rather than that only those who are expressly forbidden are excluded. The language of section 6 of the act of July 5, 1884, is plainly mandatory, and in accordance with the rule as to mandatory provisions and such views as the foregoing it has been held in the administration of the law that the

omission of any of the statutory requirements from a certificate is a fatal defect, and that the treaty of 1894 does not waive any of the requirements of section 6 of the act of 1884 as to the certificates of merchants and others of the exempt classes. (See *United States* v. *Yong Yew*, 83 Fed. Rep., 832; 21 Op., 6; Id., 68; Op. July 15, 1898.) Although the later treaty, being the later law, may modify the requirements of previous legislation in some respects (21 Op., 347), we maintain that it could not be contended that because the language of the treaty respecting the certificate of the exempt classes is not in form mandatory, but merely permissive, therefore the requirements of the act of 1884 are so far modified that substantial compliance therewith is sufficient. This principle embraces not only the underlying right of those whose calling is allied to the exempt classes, but who are not themselves of the exempt classes, and such an omission as the failure of a certificate to state the "nature, character, and estimated value of the business" of a merchant applicant, but also affects the question of the production of a certificate, as well as the exact form and character of a certificate if produced.

Before proceeding to review and apply the decisions of the Supreme Court, so far as they relate to the present question, the inquiry may be again stated and defined in the following language: Is the status of a wife and her relation to her husband, when he has become duly domiciled here and is not therefore required to produce a certificate on his return to the country after a temporary absence, to be taken as extending such exemption to her, so that upon the original entry of the wife of such a

Chinese merchant she would not be required to produce a certificate, but merely to submit evidence as to her identity and valid relation to her husband sufficient to satisfy the collector of customs under the act of August 18, 1894? Answering the question again—conceding that a fundamental natural right exists under the language of the treaties by which, in view of the relationship to the husband and father, a valid wife and legitimate minor children or children of tender years may be admitted to this country, it very clearly appears that the right in all cases must be established by the rule or measure of evidence laid down by section 6 of the act of 1884, viz, by the certificate therein required. There is no valid distinction between the case of the wife of a Chinese merchant accompanying her husband to this country upon his original entry here, and that of the wife of such merchant already domiciled here and entitled to remain in this country, who subsequently follows her husband and seeks to join him here, and for that purpose to enter the country for the first time. The wife in the present case appears to have accompanied her husband upon his return, but in both cases a certificate for the wife is requisite; that is to say, the status of a valid wife and her relation to her husband fairly embracing her with him in the permitted classes, if she is not in fact a laborer, does not extend so far as to confer upon her an immunity from the certificate requirement to which the husband is entitled because of his having acquired a domicile here. The wife is a distinct Chinese individual, and since all Chinese persons of the privileged classes must produce upon their original entry into this country

the prescribed certificate (authorities cited *ante;* also *Wan Shing* v. *United States,* 140 U. S., 424, 428), the wife of a merchant must in any case produce that certificate upon her original entry here. (Op. Atty. Gen. of Nov. 3, 1898, *vide* appendix.)

(*f*) *The Supreme Court decisions.*

The case of *Chew Heong* v. *United States,* (112 U. S., 536), decided that the laborer's certificate required by section 4 of the act of May 6, 1882, as amended by the act of July 5, 1884, prescribed as the "only evidence permissible to establish his right of reentry" into the United States, is not applicable to Chinese laborers who resided in this country at the date of the treaty of 1880, departed by sea before the date of the act of 1882, and remained out of the United States until after the date of the act of 1884; the view of the court being that especially where the good faith of the Government is concerned, the repeal of a law by the implications of a later statute are not favored, and that the intention of the legislature by the act of 1884 to withdraw from Chinese laborers who resided here at the date of the treaty rights which they had acquired under it, by exacting upon their reentry conditions which it was impossible to perform, was not so clear and positive as to give to the statute a retrospective operation, the conclusion of the court being stated in the following language on page 560:

> A Chinese laborer to whom a certificate was issued under the original act is entitled to reenter only upon producing that certificate; one to whom a certificate

was issued under the act of 1884 is entitled to reenter only upon producing such certificate; while the plaintiff in error, having left before any certificate was permitted to be issued, can not be required to produce one before reentering, because, having resided here on the 17th day of November, 1880, he was clearly entitled under the express words of the treaty to go from and return to the United States of his own free will, a privilege that would be destroyed if its enjoyment depended upon a condition impossible to be performed. * * * Thus the legislation of Congress and the stipulations of the treaty may stand together.

This opinion refers to laborers only, but it supports the view that certificates are generally necessary by reason of the very fact that an exception was found which consideration of the law as a whole was held to include and justify.

Mr. Justice Field dissented in this case mainly upon the grounds that the treaty conferred no such unrestricted right as was claimed in the case and applied only to laborers who resided here at the date of the treaty and continued their residence here until the date of the act; that, conceding the sanctity of the public faith and the constant endeavor of the courts to bring legislation into harmony with treaty stipulations, if the legislature sees fit to refuse compliance with the stipulations of a treaty or to abrogate them entirely, it should be presumed that good and sufficient reasons controlled and justified its conduct; that, the act being the later expression of the sovereign will, which may enforce, modify, or repeal a treaty, its plain purport was to exclude all Chinese laborers except those who came at certain designated

periods and continued their residence in the country, and if they should leave and be desirous of returning to require them to obtain a proper certificate of identification. Justice Bradley concurred with Justice Field in this dissent, stating that if their view of the law makes it conflict with the treaty the rule is now settled that Congress may by law overrule a treaty stipulation. The dissenting opinions show even more strongly the positive and strict character of the certificate requirements.

In *United States* v. *Jung Ah Lung* (124 U. S., 621) the applicant, also a Chinese laborer, had resided in this country on November 17, 1880, and until October 24, 1883, and then left for China, taking with him the certificate required by the original act of 1882, which was stolen from him in China. The court held that under the principle determined in the Chew Heong case the applicant could not be required to present a certificate upon his reentry containing the additional particulars required by the amendment of the act of 1884 to the fourth section of the act of 1882, and that since the act of 1882 does not require that the certificate shall be the only evidence permissible to establish the right of reentry, secondary evidence of its contents from the custom-house records of the port of departure might be received. In this case Mr. Justice Harlan, with whom concurred Mr. Justice Field and Mr. Justice Lamar, dissented (it is to be noted that Mr. Justice Harlan delivered the opinion of the majority of the court in the Chew Heong case), on the ground that since the act of 1882 required the production of a certificate for reentry and the applicant had left the United States, taking such

certificate, he could not return unless he produced it at the time he sought to reenter. The new provision in the act of 1884 that certificates would be the only evidence permissible to establish the right of reentry is considered in the dissenting opinion not to declare a new rule, but to indicate in language clearer than that previously used the intention of Congress in passing the act of 1882; that the appellee's certificate was forcibly taken from him by a band of pirates is his misfortune, but the fact ought not to defeat what was manifestly the intention of the legislative branch of the Government, which was to suspend the coming of all Chinese laborers to this country for a term of years unless such laborer previously here and returning produces to the collector the certificate issued to him. Here, again, we contend that the effect of this decision as well as of the dissenting opinion is to vindicate the demand for the appropriate certificate.

The *Chinese Exclusion Case* (*Chae Chan Ping* v. *United States*, 130 U. S., 581) established the right of the Government, notwithstanding treaty stipulations, to exclude aliens, and found the act of October 1, 1888 (25 Stat., 504), excluding Chinese laborers from the United States, to be a constitutional exercise of legislative power, which, so far as it conflicted with existing treaties between the United States and China, operated to that extent to abrogate the treaties as part of the municipal law of the United States. The subject of this decision was a Chinese laborer who held a return certificate issued under the act of 1884. The certificate conferred no right upon the applicant to return to the United States

of which he could not be deprived by a subsequent act of Congress. There was no dissenting opinion in this case.

In *Wan Shing* v. *United States* (140 U. S., 424) the applicant, who was excluded as a laborer, claimed that he was a merchant, and the opinion of the court shows that his right to land resting upon proof of the fact that he was a merchant could only have been shown by a certificate of identity issued under the authority of the Chinese Government. The concluding paragraph of the opinion states broadly the rule respecting certificates in the following terms (p. 428):

> The result of the legislation respecting the Chinese would seem to be this, that no laborers of that race shall hereafter be permitted to enter the United States, or even to return after having departed from the country, though they may have previously resided therein and have left with a view of returning; and that all other persons of that race, except those connected with the diplomatic service, must produce a certificate from the authorities of the Chinese Government, or of such other foreign Government as they may at the time be subjects of, showing that they are not laborers, and have the permission of that Government to enter the United States, which certificate is to be viséd by a representative of the Government of the United States.

It is not necessary to contend in this case, as heretofore indicated, that the phrase in this paragraph "all other persons of that race" should be construed as if it read "all other persons of that race who are entitled to enter." The Government, in its administration of these laws in cases dependent upon that phrase, contends that

such is the necessary meaning, and consequently that not all Chinese persons other than laborers may come into this country upon the production of the certificate, but that all Chinese persons other than laborers who are permitted by the law to enter the country may do so upon producing the required certificate. This contention is not, however, involved in the case before the court.

Then came the *Lau Ow Bew* case (144 U. S., 47), which determined that section 6 of the act of July 5, 1884, requiring the return certificate does not apply to Chinese merchants already domiciled in the United States who, having left the country for temporary purposes, *animo revertendi*, seek to reenter it on their return to their business and their homes. The ground of the decision regarding such a merchant is shown by the following extract (pp. 60–61, 63):

> But the phraseology of the section * * * involves the exaction of the unreasonable and absurd condition of a foreign Government certifying to the United States facts in regard to the place of abode and the business of persons residing in this country, which the foreign Government can not be assumed to know, and the means of information regarding which exist here, *unless it be construed to mean that Congress intended that the certificate should be procured only by Chinese residing in China or some other foreign country and about to come for the first time into the United States for travel or business or to take up their residence.* * * *
>
> We are of opinion that it was not intended that commercial domicil should be forfeited by temporary absence at the domicil of origin, nor that resident merchants should be subjected to loss of rights

> guaranteed by treaty if they failed to produce from the domicil of origin that evidence which residence in the domicil of choice may have rendered it difficult, if not impossible, to obtain.

One of the concluding sentences, pointing out the distinction which the court found between the *Wan Shing* case and the *Lau Ow Bew* case, shows that the latter, adjudged especially in view of the acquired domiciliary rights, may not be considered to rule the present case, viz:

> All the circumstances rendered it possible for him [Wan Shing] to procure and produce the specified certificate, and required him to do so. We have no doubt of the correctness of the judgment then rendered and the reasons given in its support.

Here there was nothing to render it impracticable or even difficult for the applicants to procure and produce the specified certificate.

The next case, that of *Fong Yue Ting* v. *United States* (149 U. S., 698), reviewed elaborately the legislation and the previous decisions, and determined that section 6 of the act of May 5, 1892, which act among other things provided for and required certificates of residence of Chinese laborers within the limits of the United States who were at the time of the passage of the act entitled to remain in the United States, was constitutional and valid, and that the right to expel aliens or any class of aliens absolutely or upon certain conditions in war or in peace, like the right to exclude them established by the previous cases, is an inherent and inalienable right of every sovereign and independent nation. The dissenting opinions in the case of the Chief

Justice, Mr. Justice Field, and Mr. Justice Brewer proceeded upon the theory that the persons affected, having acquired a lawful residence in the United States, were within the protection of the Constitution and secured by its guarantees, and that the act in question deprived them of liberty and imposed punishment without due process of law and in disregard of the constitutional guarantees. The import of the dissenting views is that the right to expel is not so broad and unqualified as the right to exclude.

In *Lem Moon Sing* v. *United States* (158 U. S., 538) it appeared that the applicant was a merchant who left this country for a temporary visit to his native land with the intention of returning and continuing his residence and business in the United States, and returned here after the act of August 18, 1894 (28 Stat., 372), was passed, which provided that "in every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of the appropriate immigration or customs officers, if adverse to the admission of such alien, shall be final, unless reversed on appeal to the Secretary of the Treasury." Upon his return he submitted to the collector, not a certificate, but credible testimony regarding his status here as a merchant, which, since he was a returning merchant, presumably would have entitled him to admission but for the act of 1894 referred to. The point adjudged was (the court declining to express any opinion upon the question whether the applicant was entitled of right

under some law or treaty to reenter the United States) in accordance with the clear determinations of previous decisions, that where a statute gives a discretionary power to an officer, to be exercised by him upon his own opinion of certain facts, he is made the sole and exclusive judge of the existence of those facts, and no other tribunal, unless expressly authorized by law to do so, is at liberty to reexamine or controvert the sufficiency of the evidence on which he acted; and that, when Congress declared that in every case of an alien excluded by the decision of the appropriate immigration or customs officers from admission to the United States under any law or treaty, such decision should be final unless reversed by the Secretary of the Treasury, the authority of the courts to review the decision of the executive officers is taken away. In this case Mr. Justice Brewer dissented.

In *Wong Wing* v. *United States* (163 U. S., 228) the provision of law before the court was the fourth section of the act of May 5, 1892, by which it was enacted that any Chinese person convicted of being unlawfully in the United States shall be imprisoned at hard labor for a period not exceeding one year, and thereafter removed from the United States. The contention of the appellant was that this summary proceeding, inflicting an infamous punishment, was in conflict with the constitutional amendments which required indictment and public trial by an impartial jury. The court, after reviewing the question of the validity of the various acts in the light of the previous decisions, said (pp. 236–7:

> Our views upon the question thus specifically pressed upon our attention may be briefly expressed

> thus: We regard it as settled by our previous decisions that the United States can as matter of public policy, by Congressional enactment, forbid aliens or classes of aliens from coming within their borders, and expel aliens or classes of aliens from their territory, and can, in order to make effectual such decree of exclusion or expulsion, devolve the power and duty of identifying and arresting the persons included in such decree and causing their deportation upon executive or subordinate officials. But when Congress sees fit to further promote such a policy by subjecting the persons of such aliens to infamous punishment at hard labor, or by confiscating their property, we think such legislation, to be valid, must provide for a judicial trial to establish the guilt of the accused.

Mr. Justice Field concurred in the result in this case, though dissenting from some of the views expressed by counsel in argument.

We have thus reviewed these cases in order to show what we think is fully established by the decisions of the court, namely, that the Chinese exclusion laws are on the whole valid and constitutional; that they rest upon undoubted government powers; that they are to be strictly and even rigorously construed; and that, as to the certificate provisions, no such exception as is here contended for may successfully be based upon the judgments of the court. The exceptions relative to Chinese laborers have disappeared through the passage of time and because all Chinese laborers are now excluded under the act of 1888, although certain registered Chinese laborers, resident in this country and entitled to remain, may now

temporarily revisit China and return to this country under the second article of the convention of December 8, 1894, upon the production of the certificate therein provided. Therefore, the only exception to the necessity for producing a certificate which the decisions of the court justify is that found in the special case of those who are in the situation of Lau Ow Bew. Every other Chinese person who is entitled at all to come into this country is certainly required under the language of the law and the force of the decisions to produce the certificate specified in section 6 of the act of 1884 (or, being a privileged laborer, the return laborer's certificate of the Treaty of 1894), and no amount or form of argument can relieve the appellees in this case from that necessity.

The case of the *United States* v. *Wong Kim Ark* (169 U. S., 649), in which a child born in the United States of Chinese parents having a permanent domicile and residence here, although subjects of the Emperor of China, was held to be by the fact of his birth a citizen of the United States, presents an analogy to the rule and exception as to certificates, for just as that opinion affirmed as universal under the common law the ancient and fundamental rule of citizenship by birth within the territory, with three clearly defined exceptions, so the plain effect and weight of the decisions on the subject now before the court is to show that the certificate requirement is universal, with a single surviving exception in the case of a merchant duly domiciled here who is returning to the country after a temporary absence.

(*g*) *The alleged hardship and impracticability of complying with the law.*

As to the hardship of such cases and the impracticability of observing the requirements of the law respecting certificates, which plainly affected the court below in this case and Judge Deady in the *Chung Toy Ho* case—even if there is real hardship, that may not determine the construction of the law; and there is, of course, no such impracticability or incongruity as was found in the *Lau Ow Bew* case, because the stress of that decision rested upon the absurdity of requiring the Chinese Government to certify to facts dependent upon a *returning* Chinese merchant's rights under his domicil of choice and business established here, as to which this Government only could properly certify. There is, of course, nothing in that decision to relieve a merchant coming here for the first time who has neglected to obtain and produce a certificate; and the impracticability seen in the present case is not at all similar to that in the case of a returning merchant, and could not relieve the woman and children coming here for the first time, for the simple reason that they are Chinese persons, and are not to be endowed so far with the status of the husband and father as to grant them an exemption attaching to him in his individual character, of which he alone might have availed if he were reentering the country after a temporary absence. The impracticability, therefore, in this case resolves itself into the greater or less degree of hardship which will flow from exacting the certificate.

It may be that, consistently with the law as administered under the Treasury regulations, the applicants may remain here subject to bond to supply the lacking certificates or depart within a given time. This would not even involve hardship, and no reason is perceived to doubt that the vital statistics and emigration records in China will permit of the certificate being obtained now from the Government there and visé'd by our consular authorities *nunc pro tunc* without the applicants being compelled to return to China to obtain it. If there are certain features of the certificate which presuppose the presence of the person permitted to come to this country at the place where and time when the certificate is issued in China, as, for instance, such as may be found in the phrase in section 6, "who shall be about to come to the United States," or the phrase "and shall show such permission and the name of the permitted person in his or her proper signature," these features would not necessarily appear to be of so vital a character that they might not be waived or substantially supplied under the peculiar circumstances of this case consistently with a strict construction of the law. In the same way, if it would be improper to permit the applicants to remain here under the stipulations of a bond, they may withdraw temporarily to adjacent foreign territory pending the receipt of the certificate. This would involve some inconvenience, but would hardly constitute hardship. Further, a trip back to China for the purpose of obtaining the certificate would involve serious inconvenience and possibly some hardship, but that course is not impracticable.

At all events, inasmuch as all the parties interested in this proceeding have had due notice of the Government claim and of the possible result thereof, so that, in view of the claim being determined adversely to the applicants, the business interests of the respective husbands and fathers may be settled and disposed of, would it be especially onerous for all the members of the separate families to withdraw to some other country or to return to China, and thus preserve the family relation? This was suggested by Mr. Justice Field in the *Ah Moy case*, *supra* (21 Fed. Rep., 785, 786): "And they need not now be separated. He can return with and protect his child wife in the Celestial Empire." It is always to be remembered that the wife and children came here in the face of the law forbidding their coming without the required certificate. If, therefore, no means for supplying the defect in their case can be found without return to China, with the alternative of abandoning the domicil here, then it is the fault, not of our laws, but of the applicants themselves that they now find themselves in a dilemma which entails expense, inconvenience, and hardship, and which may interrupt for a time their domestic relations.

(*h*) *Conclusion.*

In conclusion, therefore, we contend that however broad the fundamental right of the applicants may be as created by or recognized by the treaty stipulations, the laws require a certificate under the rule that an act constitutes as full an expression of the legislative will as a

treaty, and that the later expression of this will must prevail; that the treaty right has been so far modified that it must be exercised in accordance with the terms of the statute—that is, by the production of a certificate by every such Chinese person who is permitted to enter the United States; that the judgment of the court below is therefore erroneous and should be reversed, and that the judgment of the United States commissioner so far as ordering the defendants to be deported to China should be reinstated and the applicants be remanded to the custody of the United States marshal for the execution of the writ of deportation.

HENRY M. HOYT,
Assistant Attorney-General.

APPENDIX.

DEPARTMENT OF JUSTICE,
OFFICE OF SOLICITOR OF THE TREASURY,
Washington, D. C., July 26, 1890.

SIR: I have considered the question presented by the Rev. Frederic J. Masters, superintendent of the Chinese mission, Methodist-Episcopal Church, at San Francisco, relative to the proposed landing of the wife of Dr. Langdon, a Chinese dentist, now residing in said city.

It appears from the superintendent's letter that Dr. Langdon is a subject of China, and married his wife in that country a few years ago. The collector of the port has refused to permit her to land without the certificate required by law showing that she belongs to the privileged class of immigrants.

The superintendent argues, "That it is unreasonable to expect the Chinese officials to furnish her with a certificate of her being the wife of a dentist who is doing business only in this country. The proof," he continues, "is to be found here rather than there;" and he suggests that the lady should be admitted upon Dr. Langdon furnishing proof of the marriage. This is merely an argument *ab inconvenienti*, and can not countervail the requirements of the statute.

The difficulty lies in the fact that Dr. Langdon is not a naturalized citizen of the United States, but is an alien temporarily residing here. If he were a citizen himself, the *status* of his wife, if she were capable of naturalization, would be obvious. Section 1994, Revised Statutes,

provides that, "Any woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen."

But under the laws regulating immigration from China neither Dr. Langdon nor his wife is eligible to citizenship in the United States. Their marital relation does not except her from the requirements of the statute.

I am, therefore, constrained to hold, with the collector, that under the act of July 5, 1884 (23 Stat., p. 115), the application must be denied.

The letter referred to is herewith returned.

Very respectfully,

W. P. HEPBURN,
Solicitor.

HON. SECRETARY OF THE TREASURY.

DEPARTMENT OF JUSTICE,
Washington, D. C., November 3, 1898.

The SECRETARY OF THE TREASURY.

SIR: I have the honor to acknowledge the receipt of your communication of October 31, in which you inform me that since the 1st of October, 1896, customs officers have been instructed, in accordance with Syn. Dec. 17445, to require the certificate prescribed by section 6 of the act of July 5, 1884, relating to the exclusion of Chinese, to be presented by all applicants for admission to this country without reference to sex or age, and that under my opinion of July 15 last such officers have been instructed that only such Chinese persons as are specifically enumerated, viz, officials, teachers, merchants, or travelers for curiosity or pleasure, shall be allowed admission upon presentation of the prescribed certificate. You state that the wife of Lee Yuen, a Chinese merchant resident at Rochester, N. Y., for ten years or more, has applied

for admission to this country, but has not produced a certificate from the Government of China, from which country she comes directly to the United States, and you refer to credible testimony submitted as to the meritorious standing of Lee Yuen as a merchant of the city named. On these facts you submit for my decision the question whether or not, under the circumstances, the woman should be allowed to join her husband.

In my opinion referred to, considering the right to admission of Chinese persons known as traders under a certain form of certificate, I reached the conclusion that a trader, not being expressly known to the laws as among the exempt classes and not being properly included therein as a merchant, is not entitled to admission into the United States even upon a certificate framed in accordance with section 6 of the act of 1884. The broad result may be drawn from this opinion that no Chinese person not connected with the diplomatic service is entitled to admission into this country unless embraced in the classification marked out by the phrase "officials, teachers, students, merchants, or travelers for curiosity or pleasure." We have now to consder whether the wife of a Chinese merchant is properly to be excepted from this absolute exclusion.

In the case of *Tung Yeong* (19 Fed. Rep., 184) the court considered, under the treaty of 1880 and the act of 1882, the right of entry of certain Chinese children of tender years, and found there was no requirement of law which would necessitate the denial to the parent of the custody of his child and the sending of the latter back to the country from which he came. The treaty of 1880, by article 2, accorded to Chinese subjects when proceeding to the United States as teachers, students, merchants, or travelers, together with their body and household servants, all the rights, privileges, immunities, and exemptions which are accorded to the subjects and citizens

of the most-favored nation. Section 6 of the act of May 6, 1882, as amended by the act of 1884, required from "every Chinese person other than a laborer who may be entitled by said treaty [the treaty of 1880] or this act to come within the United States" a certificate of permission and identification from the Chinese Government or from the other foreign government of which at the time such Chinese person shall be a subject; and this amended section provided for the contents of such certificate and made the same the sole evidence permissible on the part of an applicant for admission to establish a right of entry into the United States.

In the case of *Ah Quan* (21 Fed. Rep., 182, 186) it was held that the wife or minor child of a man of the Chinese race other than a laborer, entitled to come to the United States, is a Chinese person entitled under the law to enter this country upon the production of the required certificate, but not otherwise, in view of the provisions of the amendatory act requiring a certificate, the court being satisfied that these provisions embraced every Chinese individual.

In the case of the *Chinese Wife* (21 Fed. Rep., 785), affecting the wife, coming to this country for the first time, of a laborer returning under the laws then in force, Justice Field held that, although the status of the wife is not necessarily that of her husband, and she is therefore to be regarded as other than a laborer, she is, however, a distinct person, and must furnish the certificate required; while Judge Sawyer thought that the status of the wife follows and partakes of that of the husband as one of his class, and that the wife was therefore to be excluded absolutely as a laborer.

In the case of *Chung Toy Ho et al.* (42 Fed. Rep., 398) Judge Deady held that the wife and children of a Chinese merchant, who was entitled under article 2 of the treaty of 1880 and section 6 of the act of 1884 to come within and dwell within the United States, are

entitled to come into the country with him or after him as such wife and children without the certificate prescribed in said section 6, the court considering that the domicile of the wife and children is to be taken as that of the father, and concluded, therefore, that though they are not expressly mentioned in the treaty the act of 1884 does not limit or restrict the privileges conceded by the treaty, but only adds a rule or measure of evidence by which they may be conclusively established. The learned judge further considers that the father is entitled to the company of his wife and the care and custody of his children by natural right, and ought not to be deprived of them unless the intention of Congress to the contrary is clear and unmistakable.

The cases of *Wo Tai Li* (48 Fed. Rep., 668) and *Li Foon* (80 Fed. Rep., 881) follow the earlier decisions exacting a certificate from all Chinese persons of the permitted classes, while the case of *United States* v. *Gue Lim* (83 Fed. Rep., 138) follows Judge Deady's decision in the case of Chung Toy Ho.

In *United States* v. *Lee Yee Sing*, (85 Fed. Rep., 635) the court adheres to the opinion rendered in the case of Mrs. Gue Lim, but sustains the exclusion by the collector of customs of a minor child of a Chinese merchant domiciled in this country, on the ground that paragraph 6 of the act of August 18, 1894 (2 Supp. R. S., 253), makes the decision of the appropriate Government officer excluding an alien from admission into the United States final unless reversed on appeal to the Secretary of the Treasury.

In most of the foregoing cases it appears that the husband or father had duly acquired a commercial domicile in this country.

In the case of *Lau Ow Bew* v. *United States* (144 U. S., 47, 63) it was held that a Chinese merchant having a commercial domicile here may leave the country for temporary purposes and return without the production on

his reentry of the certificate required by the act of 1884, and that the certificate is only required to be produced by Chinese persons of the exempted classes upon their original entry into the United States for travel, business, or to take up their residence.

The inquiry, then, in many cases, including the case before us, is this: Is the status of the wife and her relation to her husband when he has become duly domiciled here, and is not therefore required to produce a certificate upon his return to the country after a temporary absence, to be taken as extending such exemption to her, so that upon the original entry of the wife of such a Chinese merchant she would not be required to produce a certificate, but merely to submit evidence as to her identity and valid relation to her husband, sufficient to satisfy the collector of customs under the act of August 18, 1894?

Conceding that a fundamental natural right exists under the language of the treaties of 1880 and 1894, by which, in view of the relationship to the husband and father, a valid wife and legitimate minor children or children of tender years may be admitted to this country, I am clearly of opinion that this right in all cases must be established by the rule or measure of evidence laid down by section 6 of the act of 1884, namely, by the certificate therein required. I can perceive no valid distinction between the case of the wife of a Chinese merchant accompanying her husband to this country upon his original entry here and that of the wife of such a merchant already domiciled here and entitled to remain in this country, who subsequently follows her husband and seeks to join him here and for that purpose to enter the country for the first time. In both cases a certificate for the wife is requisite.

The status of a valid wife and her relation to her husband fairly embracing her with him in the permitted classes if she is not in fact a laborer does not extend so far as to confer upon her an immunity from the certificate

requirement to which the husband is entitled because of his having acquired a domicile here. The wife is a distinct Chinese individual, and, since all Chinese persons of the privileged classes must produce upon their original entry into this country the prescribed certificate (authorities cited *ante;* see also *Wan Shing* v. *United States*, 140 U. S., 424, 428), the wife of a merchant must in any case produce that certificate upon her original entry here.

I therefore answer your question by stating that the Chinese woman in this case, Mrs. Lee Yuen, should not be allowed to join her husband and remain in this country without the production of the proper certificate from the Government of China.

Very respectfully,

JOHN W. GRIGGS,
Attorney-General.

DEPARTMENT OF JUSTICE,
OFFICE OF SOLICITOR OF THE TREASURY,
Washington, D. C., September 7, 1895.

Hon. J. G. CARLISLE,
Secretary of the Treasury.

SIR: I have considered the correspondence submitted by Acting Secretary Hamlin, with regard to the importation of a Chinese boy named Tom Ah Bat, son of Tom Kwaie, a domiciled merchant of the city of Omaha, Nebr.

It appears that permission was at one time given for the landing of this boy, upon the understanding that he was then 8 years old. But this it seems was an error, and it being represented to the collector that he is now 14 years old that officer states that he should not be landed, for the reason that he is old enough to come in direct competition with white laborers. It is stated by Mr. Parke Godwin, in his letter to the Secretary, that

the object of the father in bringing his son to this country was for the purpose of having him educated in the American schools of Omaha. It appears, moreover, that at the time the controversy with regard to the landing of Tom Ah Bat *began he was only about 12 years old.*

The collector very prudently argues that "a Chinese boy who has arrived at the age of 14 is as old as a white boy of the age of 20 or 21," and that Chinese children who arrive at the age of 14 no longer require parental care and never attend our schools when they reach that age. He further believes that if his views should be overruled in this case and the fact should become known, it would greatly stimulate the introduction of Chinese children into this country.

It is not the fault of the boy, and probably not that of the father, that the importation and landing of his son has been postponed until he has arrived at the age of 14. Besides, I am unwilling to concur with the collector that a Chinese boy of 14 years is equal to an American boy of 20 or 21.

Under the peculiar facts in this case, and not intending to make it a precedent for the future, I am of the opinion that Tom Ah Bat, upon being properly identified, should be landed.

The correspondence referred is herewith returned.

Very respectfully,

F. A. REEVE, *Solicitor.*

DEPARTMENT OF JUSTICE,
OFFICE OF SOLICITOR OF THE TREASURY,
Washington, D. C., March 19, 1896.

Hon. J. G. CARLISLE,
Secretary of the Treasury.

SIR: I have considered the question presented by Assistant Secretary Hamlin, with regard to the landing of

the Chinese boy, Lum Sear, who applied for admission at the port of Portland, Oreg., on the 29th ultimo.

From the statement of facts made by the collector, the father of the boy, Dot Jack, has been for many years a reputable merchant of Portland, and that his son, Lum Sear, born in China, has never before been in the United States, and is now 20 years of age.

I am of the opinion that the young man can only be landed in accordance with the provisions of section 6 of the act of July 5, 1884.

The papers submitted are herewith returned.

Very respectfully,

F. A. REEVE,
Solicitor.

DEPARTMENT OF JUSTICE,
OFFICE OF SOLICITOR OF THE TREASURY,
Washington, D. C., October 1, 1896.

Hon. JOHN G. CARLISLE,
Secretary of the Treasury.

SIR: The Hon. W. E. Curtis, Acting Secretary of the Treasury, incloses for my consideration a letter dated the 26th ultimo, from the United States attorney at New York, in relation to the action of the Department in authorizing the admission of Chinese children under 16 years of age, to join their parents, domiciled in this country as merchants. An expression of my opinion upon the points suggested by the United States attorney is requested.

The United States attorney suggests that in certain summary proceedings pending in his district against Chinese persons for being in the United States unlawfully, by reason of entry without the requisite evidence, several of the defendants attempted to show that they

were boys under the age of 16, born in China, and never before in this country, but preparing to join their fathers who have been living here some time as merchants. He further states that no such certificate as is provided for by section 6 of the act of 1884, or by article 3 of the treaty with China, proclaimed December 8, 1894, was produced by the boys.

I infer that the United States attorney is somewhat embarrassed by the rulings of the Department referred to in paragraphs 17, 18, 19, 20, and 21 of Synopses of Rulings and Decisions, relating to the Chinese exclusion acts (1896).

Section 6 of the act of July 5, 1884, prescribes, that in order to the faithful performance of the provisions of the act, *every* Chinese person, other than a laborer, who may be entitled to come within the United States, and who shall be about to come into the United States, shall obtain the permission of, and be identified as so entitled by the Chinese Government, or such other foreign Government of which at the time such Chinese person shall be a subject, in each case to be evidenced by a certificate issued by such Government, which certificate shall be in the English language, and which shall show such permission, with the name of the permitted person in his or her proper signature, and which certificate shall show the individual, family, and tribal name in full, title, or official rank, if any; the age, height, and all physical peculiarities, former and present occupation or profession, when and where and how long pursued, and place of residence of the person to whom the certificate is issued, and that such person is entitled by said act to come within the United States.

In re Ah Quan, Judge Sawyer held, that the wife, or minor child, of a man of the Chinese race entitled to come to the United States, other than a Chinese laborer, is a "Chinese person," within the meaning of the original and amendatory restriction acts, and entitled to enter

upon the production of the required certificate, but not otherwise, under the provisions of the statutes. (21 Fed. Rep., 182; see also p. 785.)

In re Chung Toy Ho and Wong Choy Sin, Judge Deady held that the wife and children of a Chinese merchant, who is entitled, under article 2 of the treaty of 1880, and section 6 of the act of 1884, to come within and dwell in the United States, are entitled to come into the country with him, or after him, without the certificate prescribed by section 6. (42 Fed. Rep., 398.)

In re Wo Tai Li, Judge Hoffman held, in the case of the wife of a Chinese actor, that a Chinese person who fails to produce the certificate required by section 6 of the act of 1884, can not establish a right to enter by any other evidence. (48 Fed. Rep., 668.)

In re Wan Shing v. *The United States* (140 U. S., 424), the Supreme Court held, that "The result of the legislation respecting the Chinese would seem to be this, that no laborers of that race shall hereafter be permitted to enter the United States, or even to return after having departed from the country, though they may have previously resided therein and have left with a view of returning; and that all other persons of that race, except those connected with the diplomatic service, must produce a certificate from the authorities of the Chinese Government, or of such other foreign Government as they may at the time be subjects of, showing that they are not laborers and have the permission of that Government to enter the United States, which certificate is to be viséed by a representative of the Government of the United States."

The courts have not been uniform in the strict construction of the Chinese exclusion acts. In some instances motives of humanity have possibly been persuasive on the side of a liberal construction. But, strictly, the statute makes no express exceptions in favor of children. "All other persons of that race," says Mr. Justice Field,

in the Wan Shing case, "except those connected with the diplomatic service, must produce a certificate from the authorities of the Chinese Government, or such other foreign Government as they may at the time be subjects of."

It will be observed that one of the conditions precedent to entering the United States *is the consent of the immigrant's own government*, to be evidenced by a certificate. There is no apparent reason why this condition should not apply to a subject who is a minor, as well as to a subject who has reached lawful age. In fact, it might apply more strongly in the case of a minor.

I am, therefore, but reluctantly, inclined to the opinion that section 6 of the act of 1884 applies to Chinese children under 16 years of age whose parents are domiciled in this country as merchants.

The papers submitted are herewith returned.

Very respectfully,

F. A. REEVE,
Solicitor.

DEPARTMENT OF JUSTICE,
OFFICE OF THE SOLICITOR OF THE TREASURY,
Washington, D. C., August 3, 1898.

Hon. L. J. GAGE,
Secretary of the Treasury.

SIR: Assistant Secretary Howell has referred for my consideration certain papers relating to appeals from the decision of the collector in refusing the landing of the Chinese children. They are:

* * * * *

Second. Petition and appeal of Soon Cow.
Third. Petition and appeal of Fung Tsoy.

* * * * *

Soon Cow is a Chinese boy, born in China, and between 7 and 8 years old. His parents were both born in China. His father is a merchant in this country. His mother died soon after giving birth to this son.

Fung Tsoy, who is 10 years of age, was born in China. His father is a Chinese merchant domiciled in the United States, and his mother is dead.

* * * * *

With regard to the other Chinese children, the question is one which has been repeatedly, and diversely, decided by the courts, and has been frequently the subject of consideration by this office, namely, whether the minor children of Chinese parents domiciled in this country as merchants can be landed without the production of the certificate prescribed by section 6 of the act of July 5, 1884.

Without referring more particularly to the various Federal decisions on the subject which have already been cited and discussed in the opinions of this office, I would refer to the opinion of my predecessor, dated October 1, 1896 (Syn. 17445), and the opinion I had the honor to communicate on the 21st of July last, holding in harmony with what was considered the preponderance of judicial authority, that the minor children of Chinese merchants domiciled in this country could only be admitted upon the production of the certificate required by section 6 of the act of July 5, 1884, relating to the exclusion of Chinese. I would therefore advise you that I adhere to said ruling. See also the last paragraph of the opinion of Judge Hanford, in *Lee Yee Sing* (85 Fed. Rep., 635).

* * * * *

Very respectfully,

MAURICE D. O'CONNELL,
Solicitor.

UNITED STATES *v.* MRS. GUE LIM.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

No. 123. Submitted January 29, 1900. — Decided February 26, 1900.

Under the act of July 5, 1884, c. 220, 23 Stat. 115, construed in connection with the treaty with China of November 17, 1880, 22 Stat. 826, the wives and minor children of Chinese merchants domiciled in this country, may enter the United States without certificates.

DISTINCT appeals were taken direct to this court from the judgment of the District Court of the United States for the District of Washington, Northern Division, in the case of the above defendant in error, Mrs. Gue Lim, and from the judgment of the Western Division of that court in the cases of Ah Tong, Yee Yuen and Ah Quong, under the fifth clause of the fifth section of the act of March 3, 1891, c. 517, creating the Circuit Court of Appeals, 26 Stat. 826, 828, because the cases involve, among other questions, the construction of the treaty between the United States and China, entered into in 1880, 22 Stat. 826, article second, as affected by the third article of the treaty of December 8, 1894, 28 Stat. 1210. The various appeals were heard here as one case.

The facts in regard to Mrs. Gue Lim were agreed upon in the court below, and it appears therefrom that she is the lawful wife of Fook Kee, a Chinese merchant engaged in buying and selling merchandise in the city of Seattle and State of Washington, under the firm name of Fook Kee & Company. He was not engaged in the performance of any manual labor, except such as was necessary in the conduct of his business as such merchant, for over one year next preceding the date of his last departure from the United States, which was in April, 1896, and was in all respects a Chinese merchant lawfully domiciled in the United States. He arrived at the port of Tacoma, Washington, from China, accompanied by his wife, this being her first arrival in the United States, and the collector of cus-

toms, acting under general instructions from the Secretary of the Treasury, allowed her to land on the —— day of May, 1897, without the production of the certificate mentioned in section sixth of the act of July 5, 1884. 23 Stat. 115, c. 220. Complaint was subsequently made to the District Court that she was a Chinese laborer, and was found unlawfully in the United States, in the county of King, in the District of Washington, on the 2d day of October, 1897, without having been registered as a Chinese laborer, and without having in her possession a certificate of registration as such laborer, and without having any other legal right or authority to be and remain in the United States.

A warrant was issued by the District Court, upon which she was arrested, and after hearing evidence on behalf of the plaintiff and defendant the court decided (83 Fed. Rep. 136) that she was not a Chinese laborer, but the wife of a Chinese merchant lawfully domiciled and doing business as a merchant, and was not excluded by the laws of the United States from coming to or remaining in the United States, and she was therefore discharged from custody and the cause dismissed.

The other defendants in error had been admitted by the collector of customs at Port Townsend, and were thereafter adjudged by the United States commissioner, upon complaint made before him, to be Chinese laborers unlawfully in the United States, and the commissioner thereupon ordered them to be deported to China. They appealed from such decision, and the United States District Court for the District of Washington, Western Division, after hearing the evidence, decided that the defendants were minor children of Chinese merchants, and that they were lawfully entitled to be and remain in the United States.

The facts were agreed upon in the court below, and they are stated in the record as follows:

(1.) The defendants were born in China of parents lawfully married, and had resided in that country up to the time they came to the United States to live with their respective fathers, and were still minors under the age of fifteen years.

(2.) The fathers of these boys were, and for a long time prior

to the coming of the boys to this country, had been *bona fide* Chinese merchants, lawfully residing and doing business in the city of Walla Walla, in the State of Washington, and had sent for their sons to come from China to live with them in Walla Walla, where they were residing with their fathers when arrested by a United States immigration officer.

(3.) The boys had never procured any certificate under section sixth of the act of July 5, 1884, (*supra*,) but relied entirely upon the status of their fathers as merchants here to entitle them to come to this country, and upon that claim had been admitted by the collector of customs at Port Townsend.

A judgment discharging the defendants having been entered, the United States appealed to this court.

Mr. Assistant Attorney General Hoyt for the appellant.

No appearance for the appellee.

Mr. Justice Peckham, after stating the facts, delivered the opinion of the court.

The question here arising in regard to the correctness of the decision of the District Court in the case of the married woman depends for its solution upon the construction to be given to the sixth section of the act of Congress of 1884, c. 220, 23 Stat. 115, which is set forth in the margin.[1]

[1] Sec. 6. That in order to the faithful execution of the provisions of this act, every Chinese person, other than a laborer, who may be entitled by said treaty or this act to come within the United States, and who shall be about to come to the United States, shall obtain the permission of and be identified as so entitled by the Chinese government, or of such other foreign government of which at the time such Chinese person shall be a subject, in each case to be evidenced by a certificate issued by such government, which certificate shall be in English language, and shall show such permission, with the name of the permitted person in his or her proper signature, and which certificate shall state the individual, family and tribal name in full, title or official rank, if any, the age, height and all physical peculiarities, former and present occupation or profession, when and where and how long pursued, and place of residence of the person to whom the certificate is issued, and that such person is entitled by this act to come within the

That section must be construed in connection with the treaty concluded between this country and China in November, 1880. 22 Stat. 826.

It is contended on the part of counsel for the Government that by the subsequent treaty of March, 1894, 28 Stat. 1210, the two Governments have agreed that the requirements of a certificate as provided for in the sixth section of the act of Congress shall apply to all permitted Chinese subjects who must, without exception, produce such certificates. Article two of the treaty of 1880 and article three of the treaty of 1894 are set out in the margin.[1]

United States. If the person so applying for a certificate shall be a merchant, said certificate shall, in addition to above requirements, state the nature, character and estimated value of the business carried on by him prior to and at the time of his application as aforesaid. . . . The certificate provided for in this act and the identity of the person named therein shall, before such person goes on board any vessel to proceed to the United States, be viséd by the indorsement of the diplomatic representatives of the United States in the foreign country from which said certificate issues, or of the consular representative of the United States at the port or place from which the person named in the certificate is about to depart; and such diplomatic representative or consular representative whose indorsement is so required is hereby empowered, and it shall be his duty, before indorsing such certificate as aforesaid, to examine into the truth of the statements set forth in said certificate, and if he shall find upon examination that said or any of the statements therein contained are untrue it shall be his duty to refuse to indorse the same. Such certificate viséd as aforesaid shall be *prima facie* evidence of the facts set forth therein, and shall be produced to the collector of customs of the port in the district in the United States at which the persons named therein shall arrive, and afterwards produced to the proper authorities of the United States whenever lawfully demanded, and shall be the sole evidence permissible on the part of the person so producing the same to establish a right of entry into the United States; but said certificate may be controverted and the facts therein stated disproved by the United States authorities.

[1] *Treaty of* 1880.

Article II.

Chinese subjects, whether proceeding to the United States as teachers, students, merchants or from curiosity, together with their body and household servants, and Chinese laborers who are now in the United States, shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities and exemptions which are accorded to the citizens and subjects of the most favored nation.

We do not think the treaty of 1894 alters the result flowing from the treaty of 1880 and the act of 1884. The question is, whether under the act of 1884, construed in connection with the treaty of 1880, the wife of a Chinese merchant, domiciled in this country, may enter the United States without a certificate, because she is the wife of such merchant.

Although the third article of the treaty of 1894 does speak of certificates for Chinese subjects therein described, who already enjoy the right to enter the country, the question recurs whether the certificate of the husband who himself enjoys the right is not enough for the wife, the fact being proved or admitted that she is such wife. Possibly the result of the treaty of 1894 may be held to be, instead of simply prohibiting the entrance of Chinese laborers, to restrict the right of entry to those classes who are specially named in the third article of the treaty. But the question would still remain whether the wives of the members of the classes privileged to enter, were not entitled themselves to enter by reason of the right of the husband and without the certificate mentioned in the act of 1884.

There has been some difference of opinion among the lower courts as to the true construction to be given to the treaty and the act of Congress. The judges in some cases have taken the view that the wife and minor children of a Chinese merchant, who is himself entitled, under the second article of the treaty of 1880 and section sixth of the act of 1884, to come within and dwell in the United States, were entitled to come into the country with him or after him as such wife and children without the certificate prescribed in that section. Other judges

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Treaty of 1894.

Article III.

The provisions of this convention shall not affect the right at present enjoyed of Chinese subjects, being officials, teachers, students, merchants or travellers for curiosity or pleasure, but not laborers, of coming to the United States and residing therein. To entitle such Chinese subjects as are above described to admission into the United States they may produce a certificate from their government or the government where they last resided viséd by the diplomatic or consular representative of the United States in the country or port whence they depart.

have held that they were not entitled to enter the country without the production of the certificate mentioned in the act.

Those cases holding the right of the wife to enter without a certificate are *In re Chung Toy Ho*, 42 Fed. Rep. 398, in the Circuit Court, District of Oregon, May, 1890, in which case the opinion was delivered by Judge Deady; *In re Lee Yee Sing*, 85 Fed. Rep. 635, decided in 1898 in the District Court for the State of Washington; also in this case, *United States* v. *Gue Lim*, 83 Fed. Rep. 136, District Court of Washington, 1897.

Those adverse to the doctrine are *In re Ah Quan*, 21 Fed. Rep. 182, 186, decided in 1884 in the Circuit Court, District of California; *In re Ah Moy*, 21 Fed. Rep. 785, in the same court, September, 1884; *In re Wo Tai Li*, 48 Fed. Rep. 668, in the District Court, Northern District of California, August, 1888; *In re Lum Lin Ying*, 59 Fed. Rep. 682, District Court of Oregon, February, 1894; *In re Li Foon*, 80 Fed. Rep. 881, Circuit Court, Southern District of New York, 1897.

Some of the latter cases do not involve the exact point now before the court, but they are in the direction stated.

It is not necessary to review these cases in detail. It is sufficient to say that we agree with the reasoning contained in the opinion delivered by Judge Deady. *In re Chung Toy Ho*, 42 Fed. Rep. *supra*. In our judgment the wife in this case was entitled to come into the country without the certificate mentioned in the act of 1884.

The act of 1882, of which that of 1884 was an amendment, was passed, as is stated in its title, "To execute certain treaty stipulations relating to Chinese," and therefore we must assume that the body of the act has that purpose.

This court has already sustained the power of Congress to provide for excluding or expelling Chinese, even in contravention of a treaty; also the power to intrust the final determination of the facts upon which the individual is to be expelled, to an executive officer. *Fong Yue Ting* v. *United States*, 149 U. S. 698; *Wong Wing* v. *United States*, 163 U. S. 228. But it is not the power of Congress over the subject with which we are now dealing. The question is, What did Congress

mean by the act of 1884? Some light upon that question can be derived from the treaty of 1880, which must be read in connection with it. By article two of the treaty, Chinese subjects proceeding to the United States, either as teachers, students, merchants, or from curiosity, together with their body and household servants, were to be allowed to go and come of their own free will and accord, and were to be "accorded all the rights, privileges, immunities and exemptions which are accorded to the citizens and subjects of the most favored nation." It was for the avowed purpose of carrying these treaty stipulations into effect that the act of 1882, 22 Stat. 58, and the amended act of 1884, 23 Stat. 115, were passed.

It is impossible to entertain the belief that the Congress of the United States, immediately after the conclusion of a treaty between this country and the Chinese Empire, would, while assuming to carry out its provisions, pass an act which violated or unreasonably obstructed the obligation of any provision of the treaty. As was stated by Mr. Justice Harlan in delivering the opinion of the court in *Chew Heong* v. *United States*, 112 U. S. 536, 539: "The court should be slow to assume that Congress intended to violate the stipulations of a treaty so recently made with the government of another country. . . . Aside from the duty imposed by the Constitution to respect treaty stipulations when they become the subject of judicial proceedings, the court cannot be unmindful of the fact that the honor of the government and the people of the United States is involved in every inquiry whether rights secured by such stipulations shall be recognized and protected. And it would be wanting in proper respect for the intelligence and patriotism of a coördinate department of the government were it to doubt, for a moment, that these considerations were present in the minds of its members when the legislation in question was enacted." We ought, therefore, to so consider the act, if it can reasonably be done, as to further the execution and not to violate the provisions of the treaty.

There is nothing in the act of 1884 which, in terms, enumerates and provides for the admission of particular classes of

persons. It speaks in the sixth section of those who may be entitled under the treaty or under the act to come within the United States, but the act does not assume to enlarge the number or character of the classes specially named in the treaty as entitled to admission. It is plain that in this case the woman could not obtain the certificate as a member of any of those specially enumerated classes. She is neither an official, a teacher, a student, a merchant nor a traveller for curiosity or pleasure. She is simply the wife of a merchant, who is himself a member of one of the classes mentioned in the treaty as entitled to admission. And yet it is not possible to presume that the treaty, in omitting to name the wives of those who by the second article were entitled to admission, meant that they should be excluded. If not, then they would be entitled to admission because they were such wives, although not in terms mentioned in the treaty.

Does the sixth section mean that in such case the wife must obtain the certificate therein provided for? We think not. Although the section provides that every Chinese person, other than a laborer, who may be entitled by the treaty or by the act to enter the United States must have a certificate, the contents whereof are therein stated, yet when we come to look at the particulars which it directs shall be set forth in the certificate, we see that the section was not drawn with the view of embracing the case of one who claims the right of admission simply as the wife of a person entitled to enter and remain in this country. She may have had no former, and may have no present, occupation or profession within the meaning of the section, and, of course, in that case, it cannot be stated when and where and how long it has been pursued.

The section assumes that the applicant for a certificate has some occupation or profession which has been theretofore pursued at some place, which is not the case here.

Various other provisions in the section render it plain to our minds that it was never intended to extend to the wives of persons who were themselves entitled to entry. A certificate that should only state that the person therein identified was the wife of a member of the admitted class, and had no occu-

pation or profession, it seems to us would not be a compliance with the section, and if not, then it would not be possible to comply with its provisions in this case, and the consequence would be that (if a certificate were necessary under the sixth section,) the statute would exact as a condition of entrance into the country, that which the person could not perform, although otherwise entitled to enter.

While the literal construction of the section would require a certificate, as therein stated, from every Chinese person, other than a laborer, who should come into the country, yet such a construction leads to what we think an absurd result, for it requires a certificate for a wife of a merchant, among others, in regard to whom it would be impossible to give the particulars which the statute requires shall be stated in such certificate.

"Nothing is better settled," says the present Chief Justice, in *Lau Ow Bew* v. *United States*, 144 U. S. 47, 59, "than that statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion."

The purpose of the sixth section, requiring the certificate, was not to prevent the persons named in the second article of the treaty from coming into the country, but to prevent Chinese laborers from entering under the guise of being one of the classes permitted by the treaty. It is the coming of Chinese laborers that the act is aimed against.

It was said in the opinion in the *Lau Ow Bew case*, in speaking of the provision that the sole evidence permissible should be the certificate: "This rule of evidence was evidently prescribed by the amendment as a means of effectually preventing the violation or evasion of the prohibition against the coming of Chinese laborers. It was designed as a safeguard to prevent the unlawful entry of such laborers, under the pretence that they belong to the merchant class or to some other of the admitted classes."

It was also held in that case that although the literal wording of the statute of 1884, section six, would require a certificate in the case of a merchant already domiciled in the United States and who had left the country for temporary purposes,

animo revertendi, yet its true and proper construction did not include his case, and the general terms used in the act were limited to those persons to whom Congress manifestly intended to apply them, which would be those who were about to come to the United States for the first time, and not to those Chinese merchants already domiciled in the United States who had gone to China for temporary purposes only, with the intention of returning. The case of *Wan Shing* v. *United States*, 140 U. S. 424, was referred to, and attention called to the fact that the appellant therein was not a merchant but a laborer, who had acquired no commercial domicil in this country, and was clearly within the exception requiring him to procure and produce the certificate specified in the act. The ruling was approved, and the differences in the two cases pointed out by the Chief Justice.

To hold that a certificate is required in this case is to decide that the woman cannot come into the country at all, for it is not possible for her to comply with the act, because she cannot in any event procure the certificate even by returning to China. She must come in as the wife of her domiciled husband or not at all. The act was never meant to accomplish the result of permanently excluding the wife under the circumstances of this case, and we think that, properly and reasonably construed, it does not do so. If we hold that she is entitled to come in as the wife, because the true construction of the treaty and the act permits it, there is no provision which makes the certificate the only proof of the fact that she is such wife.

In the case of the minor children, the same result must follow as in that of the wife. All the reasons which favor the construction of the statute as exempting the wife from the necessity of procuring a certificate apply with equal force to the case of minor children of a member or members of the admitted classes. They come in by reason of their relationship to the father, and whether they accompany or follow him, a certificate is not necessary in either case. When the fact is established to the satisfaction of the authorities that the person claiming to enter, either as wife or minor child, is in fact the wife or minor child of one of the members of a class mentioned

in the treaty as entitled to enter, then that person is entitled to admission without the certificate.

These views lead to the affirmance of the judgments, and they are accordingly

Affirmed.